II. World Trade Organization

Overview[1]

The past year marked an important turning point in the World Trade Organization's (WTO) short history. The highlight was the mid-November agreement reached by WTO Members at their Fourth Ministerial Meeting in Doha, Qatar to launch new negotiations on global trade liberalization. These negotiations, which are to be completed no later than January 2005, will promote economic growth and recovery in the United States, and around the world, while strengthening the rules-based multilateral trading system. The United States also played a key role in the accessions of China and Taiwan to the WTO. Their accession agreements will integrate two of the world's largest economies into the rules-based WTO trading system and provide U.S. exporters and investors with expanded access to their important markets.

This chapter reports the progress made on the work program of the WTO, and most importantly outlines the work ahead for 2002, beginning with the negotiations launched at Doha, the implementation of existing Agreements, and the critical negotiations to expand the WTO's membership to include additional Members such as Russia and other nations seeking to reform their economies and join the WTO.

[1] The information in this section is provided pursuant to the reporting requirements contained in sections 122 and 124 of the Uruguay Round Agreements Act.

A. The WTO's Fourth Ministerial Conference in Doha, Qatar, November 9-14, 2001

Much of the work in 2001 was devoted to the preparations for the ministerial meeting in Doha. Article IV of the Marrakesh Agreement Establishing the WTO requires that the WTO hold a ministerial conference at least once every two years. Given the WTO's ongoing responsibility to supervise and assist in the implementation of commitments, the further liberalization of trade, and the resolution of disputes, the Members believed it would be important for ministers to meet on a regular basis in order to provide the necessary direction and political oversight to the organization's work. This regular cycle of ministerial meetings is one innovative aspect of the WTO.

Substantive preparations for the Doha meeting were the responsibility of the WTO General Council under the skillful leadership of Chairman Stuart Harbinson of Hong Kong, China and WTO Director General Michael Moore. Ministers arrived in Doha seeking to forge a consensus on the agenda for new negotiations. Ambassador Zoellick, working closely with Qatari Minister of Finance, Economy, and Trade Youssif Hussein Kamal and other ministers, arrived at agreements to launch new global trade negotiations, also known as the "Doha Development Agenda." WTO Members also made important decisions related to implementation of WTO Agreements, an issue that had been the subject of great attention since the WTO's Third Ministerial meeting in Seattle, and reached an accord on an important political statement with the

"Declaration on the TRIPS Agreement and Public Health." All three declarations are located in Annex II of this report.

The agreements in Doha open a new chapter for the WTO. Unlike previous rounds, it is widely recognized that developing countries, which now comprise more than two-thirds of the WTO's membership, are at the center of the new negotiations. In addition to our traditionally close working relationship with the European Union and our developed-country partners, the United States worked closely with our developing-country partners throughout the year in setting the agenda for negotiations, from the Cairns Group on Agriculture to our partners in sub-Saharan Africa. As a result, the United States succeeded in obtaining an agenda for the new negotiations which is heavily oriented towards market access issues, with agricultural reform at the heart of the agenda.

Prospects for 2002

Now that negotiations are launched, WTO Members will need to move expeditiously in 2002 to establish a calendar for negotiations. Negotiating proposals and offers must be tabled within the first 12-18 months of the negotiations, followed by a ministerial meeting in mid-2003. Hard bargaining will ensue as nations pursue agreement by the deadline of January 1, 2005. Just as U.S. leadership was essential to the successful launch of negotiations, an aggressive, activist approach by the United States will be critical to guarantee success for America's interests. Key negotiating issues include:

1. ***Agriculture*:** To achieve a program of fundamental reform, we are committed to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. By March 2003, negotiators must agree on the "modalities" or the extent to which they will cut barriers to market access and export subsidies; by June 2003, negotiators will table specific requests and offers on reducing support and protection, using these modalities. The WTO negotiations in agriculture are closely related to the FTAA negotiations, where trading partners want to see progress in agriculture that will only be possible in the WTO, where Europe will have to address its export subsidies. Rapid progress in 2002 in agriculture, through substantive, credible proposals, is essential for both the WTO and FTAA negotiations.

2. ***Non-Agricultural Market Access***: Market access for manufacturing must keep pace with the progress on agriculture, and the expansive agenda obtained by U.S. negotiators provides a unique opportunity to pursue America's interests. During 2002, governments will make proposals for negotiating "modalities" with the aim of reaching agreement by March 2003. Modalities cover the general ground rules under which negotiations will be conducted, including the manner or extent to which tariff and non-tariff barriers in manufactured products will be reduced or eliminated. Working together with Congress and industry during 2002, we will develop proposals so that we meet the deadline for reaching consensus on modalities. Past U.S. efforts brought about the Information Technology Agreement, Chemical Harmonization and a host of other initiatives aimed at eliminating barriers to trade.

3. ***Services***: An aggressive agenda for market opening in services sectors such as audio-visual services, financial services (including insurance), express delivery services and telecommunication services is within reach. No later than June 2002, requests of other Members to open their market

must be made, and shortly thereafter, offers are to be submitted. Work in 2002 will concentrate on the development of these requests. The United States is a world leader in services for the 21st century, a sector which now accounts for 80 percent of U.S. employment. Market openings in services are essential to long term growth of the U.S. economy. In particular, it is essential that we ensure that there is no discrimination against services delivered via the Internet.

4. ***Dispute Settlement***: The system of WTO rules is only as strong as our ability to enforce our rights under these Agreements. By May 2003, agreement must be reached on improving this system of enforcement, including making the WTO more transparent in its operation.

5. ***WTO Rules***: As tariffs have declined in the United States, American workers need strong and effective trade rules to combat unfair trade practices. Negotiators obtained a solid mandate that recognizes the importance of existing Agreements and the instruments (*i.e.*, domestic trade laws) for enforcing those Agreements. We also obtained a commitment to strengthen the rules and address the underlying causes of unfair trade practices. America's long-term interests will be harmed unless we reinforce the rule of law. The process envisioned in the WTO should result in strengthened trade rules in antidumping and subsidies, as well as new disciplines on harmful fish subsidies that contribute to overfishing or have other trade-distorting effects. Work in 2002 will focus on these U.S. objectives.

6. ***Trade Facilitation (Customs Procedures):*** Strengthened trade rules governing customs procedures to ensure the free flow of goods and services in the new just-in-time economy are the eventual aim of work in the WTO. American exporters of manufactures and agriculture require strengthened rules aimed at greater transparency and which combat corruption in customs procedures. Improved customs procedures are particularly crucial to the success of the U.S. express delivery industry. U.S. leadership in 2002 to develop proposals and forge consensus, particularly among developing countries, will be the key to success.

7. ***Environment***: By mid-2003, decisions will be taken on how negotiations should proceed on the relationship between existing WTO rules and specific trade obligations in Multilateral Environmental Agreements (MEAs), enhanced communications between MEA Secretariats and specific WTO committees, and reduction or elimination of barriers to environmental goods and services. The United States has played a leading role in incorporating environmental concerns into the WTO negotiations, and believes the negotiations present significant opportunities to take practical steps to enhance institutional cooperation and foster compatible and mutually supportive trade and environment regimes. Work in 2002 will seek to advance this agenda.

8. ***Competition and Investment:*** By mid-2003, decisions will be taken on how negotiations should proceed in these areas vital to long-term U.S. interests. On investment, we have an opportunity to establish the rules of the road where the United States has the greatest stake in ensuring openness and transparency in the regimes of newly emerging market economies. On competition, we will continue ongoing work with regard to clarifying core principles, and

assisting developing-country WTO Members in understanding competition policy and its relationship with trade liberalization and economic growth.

9. ***Transparency in Government Procurement:*** During 2002, the United States will continue to lead efforts in the WTO to forge a consensus on the elements of an agreement that establishes a common set of procedures to ensure that government purchasing decisions are done in an open and transparent fashion. This will be an important contribution and complement to other initiatives to combat corruption and unfair trade practices.

10. ***Trade and Development***: Success in the negotiations will only be achieved if the United States and its trading partners focus on the need to integrate developing countries into the multilateral trading system. An intensified program of technical assistance and capacity building, in cooperation with the WTO and other international organizations, will be an essential aspect of our work in 2002.

11. ***Implementation***: The Doha Declaration establishes a rigorous work program on questions of implementation, including issues that were discussed in the Doha preparatory process. In some cases, differences may only be bridged through further negotiation, and in still others, a consensus for action may not emerge. The United States will continue to participate seriously in these discussions during 2002, and in developing the report that will be provided to the Trade Negotiations Committee at the end of the year.

B. Built-In Agenda Negotiations in Agriculture and Services

The "built-in agenda" negotiations on agriculture and services proceeded in 2001 in advance of the Fourth Ministerial Conference in Doha. The mandates, respectively, are to pursue further agricultural reform and liberalization in services. In 2000, WTO Members established time frames for tabling proposals in both areas and conducted a rigorous program of special sessions of the Committee on Agriculture and the Council for Trade in Services. In March 2001, following stocktaking sessions, both bodies agreed on a further one-year work program.

Agriculture: The WTO provides multilateral disciplines on agricultural trade policies and serves as a forum for further negotiations on agricultural trade reform. The WTO is uniquely situated to advance the interests of U.S. farmers and ranchers because only through WTO rules are U.S. producers and exporters able to impose disciplines on other large agricultural producing and consuming nations. For example, absent a WTO agreement on agriculture, there would be no limits on EU subsidization or firm commitments for access to the Japanese market. Through negotiations in the WTO, America has the best hope to open important markets for U.S. farm products and reduce subsidized competition. At Doha, WTO Members agreed to an ambitious mandate for agriculture, including "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support."

Developing countries, particularly Members of the Cairns Group[2] look to the agriculture negotiations as the means for achieving more

[2]Current Cairns Group Members are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay.

significant and meaningful trade performance in the global economy. Developing countries' growth in exports and world market share increased following the Uruguay Round. Nonetheless, most developing countries feel they have not yet been able to implement new disciplines established in the Uruguay Round, and hence are not yet obtaining full benefits. Their concerns can not be overlooked during these negotiations.

The Uruguay Round Agreement on Agriculture provided the framework for further negotiations and mandated negotiations on agriculture to begin in the year 2000. Early in 2000, Members established time frames for the tabling of proposals and conducted a rigorous program of special sessions of the Committee on Agriculture throughout 2000. In March 2001, Members agreed to a work plan for the second phase of negotiations, in-depth discussion of all the topics addressed in initial negotiating proposals. With two years of negotiations nearly complete, including the tabling of some 45 proposals on behalf of 121 Members, the next phase of negotiations will focus on developing reform modalities – general approaches to reducing protection and support, and formulating new disciplines on trade-related agricultural policies. The three main areas for improvement in trade disciplines are export subsidies, market access and domestic support. The Doha Ministerial Declaration established ambitious negotiating time lines with modalities to be decided no later than March 31, 2003 and submission of draft schedules of specific commitments by the next WTO Ministerial Conference. This will require an intense work program in 2002.

Export Subsidies. The Agriculture Agreement places limits on the use of export subsidies. Products that have not benefitted from export subsidies in the past are banned from receiving them in the future. Where countries had provided export subsidies in the past, the future use of export subsidies has been capped and reduced. Currently, the European Union accounts for over 90 percent of global annual spending on agricultural export subsidies. Many Members, including the United States and a number of developing countries, have called for the elimination of export subsidies to be an outcome of the new negotiations. A number of countries have also called for stricter disciplines on other export-related government programs, including export credits, food aid, and privileges enjoyed by state trading enterprises.

Market Access. The Agriculture Agreement sets agricultural trade on a more predictable basis by requiring the conversion of non-tariff barriers, such as quotas and import bans, into simple tariffs. Today, tariffs represent the primary WTO-consistent restriction for trade in agricultural products. Quotas, discriminatory licensing, and other unjustified non-tariff measures are now prohibited. Also, all agricultural tariffs have been reduced from earlier levels and "bound" in the WTO; a decision by a Member to impose tariff rates above a binding without authorization would violate WTO obligations.

Creating a "tariff-only" system for agricultural products is an important advance, yet tariffs on agricultural products around the world remain too high. Additionally, administrative difficulties with tariff-rate quota systems continue to impede international trade in food and fiber products. Substantial tariff reductions and reform of administrative systems are a key feature of a number of the negotiating proposals submitted in 2000. The U.S. proposal, submitted in June 2000, focuses on reducing high tariffs, an outcome that would benefit U.S. producers who generally have less tariff protection than producers in other countries.

The United States also has proposed tightening disciplines on the administration of tariff-rate quotas, expanding access under tariff-rate quotas, simplifying tariff systems, and reducing the trade-distorting potential of state trading enterprises. Members of the Cairns Group of exporting countries and some developing countries have also focused their proposals on

the need for substantial tariff reductions in developed country markets.

Domestic Support. Governments have the right to support farmers if they so choose. However, the Agriculture Agreement encourages that support be provided in a manner that causes minimal distortions to production and trade. The Agreement caps trade-distorting domestic support that a Member can provide to its farmers, but preserves the criteria-based "green box" policies that can provide support to agriculture in a manner that minimizes distortions to trade. The U.S. proposal submitted in June 2000 calls for a reduction in the level of trade-distorting support and the establishment of a ceiling on trade-distorting support that applies equally to all countries proportionate to the size of their agricultural economy. This proposal will reduce unfair competition in world markets and eliminate disparities resulting from unequal levels of support provided in the base period. Some other WTO Members have called for the elimination of all trade-distorting support and a cap on the green box non-trade-distorting support.

Negotiating Proposals. Forty-five proposals were submitted during the first year of negotiations (all of these papers can be accessed by the public from the WTO web site at http://www.wto.org.) The United States tabled the first comprehensive proposal in June 2000 and later a proposal on tariff-rate quota reform in November 2000. The Cairns Group of exporting countries tabled four proposals, one each on export competition, domestic support, market access, and export restrictions. The European Union submitted a comprehensive proposal and four narrower proposals on animal welfare, domestic support, food quality, and export competition. Japan submitted a comprehensive negotiating proposal. Switzerland, Mauritius, Norway, Korea, India, Turkey, Egypt, Nigeria, Democratic Republic of Congo, Kenya, Senegal, Mexico, Jordan, Croatia, the WTO Africa Group, Poland and Namibia also submitted comprehensive proposals. A number of other Members, including a number of groups of developing countries, submitted proposals on specific negotiating topics. In the second year (2001) of negotiations, numerous informal discussion papers were submitted by a wide range of Members detailing views on particular reform proposals. These discussions allowed some Members to provide background explanations to justify their country's position and elaborate further on proposals submitted in the first year (2000).

Key Elements of U.S. Proposals for Agricultural Reform

Tariffs and TRQs. Comprehensive reductions in tariffs and tariff disparities and increases in tariff-rate quota quantities, without exception.

Export Subsidies. Elimination of export subsidies.

Domestic Support: Simplifies the current structure by creating two categories of support: 1) non-trade distorting measures that are not subject to limits; and, 2) trade-distorting measures that would be subject to reductions. Establishes a limit of trade-distorting support based on a fixed proportion of the value of national agriculture production.

State Trading Enterprises. Disciplines the activities of import and export state trading enterprises, including ending their monopoly privileges.

New Technologies. Flags the importance of addressing trade barriers to products of new technology, including biotechnology, but does not suggest specific disciplines.

Export Restrictions. Strengthens disciplines on export restrictions to increase the reliability of global food supply.

Special and Differential Treatment. Provides special consideration to the concerns of the poorer WTO Members to ensure the agreement is appropriate for their circumstances.

Services: Pursuant to the mandate provided in the Uruguay Round, in 2000, Members embarked upon new, multi-sectoral services negotiations under Article XIX of the General Agreement on Trade in Services (GATS). The Council for Trade in Services (CTS), meeting in special session, serves as the negotiating body.

The services negotiations are critically important to the U.S. economy. Providing services are what most Americans do for a living. Service industries account for nearly 80 percent of U.S. employment and private sector GDP. U.S. exports of commercial services (*i.e.*, excluding military and government) were $279 billion in 2000, supporting over four million services and manufacturing jobs in the United States. Cross-border trade in services accounts for more than 25 percent of world trade, or about $1.4 trillion annually. U.S. services exports have more than doubled over the last 10 years, from $137 billion in 1990. U.S. services compete successfully worldwide. Major markets for U.S. services include the European Union ($90 billion in private sector 2000 exports), Japan ($34 billion), and Canada ($23 billion). At $14 billion, Mexico is presently the largest emerging market for services exports. And, these export industries are spread throughout the country – for example, every state in the union has companies engaged in exports of information and data processing services, and all states but one have companies engaged in export of software services.

Services are important to an efficient economy. They include essential infrastructure systems like telecommunications, finance, energy services, transportation, and distribution; professional services like accounting, law, architecture, and engineering; and environmental services such as sewage, refuse disposal, sanitation and exhaust gas reduction services.

In March 2001, WTO Members reached agreement on guidelines and procedures for the services negotiations, reaffirming the basic objectives of removing restrictions and providing effective market access for trade in services. The work of the negotiating body during 2001 was marked by extensive discussion of negotiating proposals. The United States had submitted the first comprehensive negotiating proposal in July 2000, followed by 12 detailed proposals in December 2000 and two additional proposals in July 2001. The proposals cover 12 sectors (accountancy services; advertising services; audio-visual and related services; distribution services; education and training services; energy services; environmental services; express delivery services; financial services; legal services; telecommunications, value-added network, and complementary services; and tourism services), one GATS "mode of supply" (temporary entry of natural persons), and the cross-cutting topic of the role of transparency in the regulation of services.

As of December 2001, 42 countries had submitted some 140 proposals, including proposals from approximately 30 developing countries. As is the case for the U.S. submissions, in general these proposals describe a country's objectives for the negotiations in a sector or topic. All of these proposals are available on the WTO website; the U.S. proposals also are available on USTR's website. Members used the May, July, October, and December 2001 CTS special sessions for structured discussion of the proposals, establishing a schedule to encourage participation by capital-based sectoral and other experts. In December 2001, discussions took place on five agreed topics, including the relevance of service sectors to developing country interests.

The Doha Ministerial Declaration established two benchmark dates for the services negotiations: submission of liberalization requests by June 30, 2002, and submission of liberalization offers by March 31, 2003. While discussion and submission of negotiating proposals will continue in early 2002, the U.S. and other WTO Members will now turn their attention to preparation of requests by the agreed June 30 deadline.

C. Dispute Settlement Body

1. The Dispute Settlement Understanding

The Understanding on Rules and Procedures Governing the Settlement of Disputes ("Dispute Settlement Understanding" or "DSU"), which is annexed to the WTO Agreement, provides a mechanism to settle disputes under the Uruguay Round Agreements. Thus, it is key to the enforcement of U.S. rights under these Agreements.

The DSU is administered by the Dispute Settlement Body ("DSB"), which includes representatives of all WTO Members. The DSB is empowered to establish dispute settlement panels, adopt panel and Appellate Body reports, oversee the implementation of panel recommendations adopted by the DSB and authorize retaliation. The DSB makes all its decisions by "consensus." Annex II at the end of this chapter provides more background information on the WTO dispute settlement process.

Dispute Settlement Body Actions in 2001

The DSB met 21 times in 2001 to oversee disputes and to take care of tasks such as electing Appellate Body members and approving additions to the roster of governmental and non-governmental panelists.

Roster of Governmental and Non-Governmental Panelists: Article 8 of the DSU makes it clear that panelists may be drawn from either the public or private sector and must be "well-qualified," such as persons who have served on or presented a case to a panel, represented a government in the WTO or the GATT, served with the Secretariat, taught or published in the international trade field, or served as a senior trade policy official. Since 1985, the Secretariat has maintained a roster of non-governmental experts for GATT 1947 dispute settlement, which has been available for use by parties in selecting panelists. In 1995, the DSB agreed on procedures for renewing and maintaining the roster, and expanding it to include governmental experts. In response to a U.S. proposal, the DSB also adopted standards increasing and systematizing the information to be submitted by roster candidates, to aid in evaluation of candidates' qualifications and to encourage the appointment of well-qualified candidates who have expertise in the subject matters of the Uruguay Round Agreements. In 2001, the DSB approved by consensus a number of additional names for the roster. The United States scrutinized the credentials of these candidates to assure the quality of the roster.

The present WTO panel roster appears in the background information in annex II. The list in the roster notes the areas of expertise of each roster member (goods, services and/or TRIPS).

Rules of Conduct for the DSU: The DSB completed work on a code of ethical conduct for WTO dispute settlement and on December 3, 1996, adopted the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*. A copy of the Rules of Conduct was printed in the Annual Report for 1996 and is available on the WTO and USTR websites. There were no changes in these Rules in 2001.

The Rules of Conduct were designed to elaborate on the ethical standards built into the DSU, and to maintain the integrity, impartiality and confidentiality of proceedings conducted under the DSU. The Rules of Conduct require all individuals called upon to participate in dispute settlement proceedings to disclose direct or indirect conflicts of interest prior to their involvement in the proceedings, and to conduct themselves during their involvement in the proceedings so as to avoid such conflicts. The Rules of Conduct also provide parties to a dispute an opportunity to address potential material violations of these ethical standards. The coverage of the Rules of Conduct exceeds the goals established by Congress in section 123(c) of the Uruguay Round Agreements Act (URAA), which directed the USTR to seek

conflict of interest rules applicable to persons serving on panels and members of the Appellate Body. The Rules of Conduct cover not only panelists and Appellate Body members, but also (1) arbitrators; (2) experts participating in the dispute settlement mechanism (e.g., the Permanent Group of Experts under the Subsidies Agreement); (3) members of the WTO Secretariat assisting a panel or assisting in a formal arbitration proceeding; (4) the Chairman of the Textile Monitoring Body ("TMB") and other members of the TMB Secretariat assisting the TMB in formulating recommendations, findings or observations under the Agreement on Textiles and Clothing; and (5) support staff of the Appellate Body.

As noted above, the Rules of Conduct established a disclosure-based system. Examples of the types of information that covered persons must disclose are set forth in Annex II to the Rules, and include the following: (1) financial interests, business interests, and property interests relevant to the dispute in question; (2) professional interests; (3) other active interests; (4) considered statements of personal opinion on issues relevant to the dispute in question; and (5) employment or family interests.

Appellate Body: The DSU requires the DSB to appoint seven persons to serve on an Appellate Body, which is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expired at the end of two years. At its first meeting on February 10, 1995, the DSB formally established the Appellate Body, and agreed to arrangements for selecting its members and staff. They also agreed that Appellate Body members would serve on a part-time basis, and sit periodically in Geneva. The original seven Appellate Body members, who took their oath on December 11, 1995, were: Mr. James Bacchus of the United States, Mr. Christopher Beeby of New Zealand, Professor Claus-Dieter Ehlermann of Germany, Dr. Said El-Naggar of Egypt, Justice Florentino Feliciano of the Philippines, Mr. Julio Lacarte-Muró of Uruguay, and Professor Mitsuo Matsushita of Japan. On June 25, 1997, it was determined by lot that the terms of Messrs. Ehlermann, Feliciano and Lacarte-Muró would expire in December 1997. The DSB agreed on the same date to reappoint them for a final term of four years commencing on 11 December 1997. On October 27, 1999 and November 3, 1999, the DSB agreed to renew the terms of Messrs. Bacchus and Beeby for a final term of four years, commencing on December 11, 1999, and to extend the terms of Dr. El-Naggar and Professor Matsushita until the end of March 2000. On April 7, 2000, the DSB agreed to appoint Mr. Georges Michel Abi-Saab of Egypt and Mr. A.V. Ganesan of India to a term of four years commencing on June 1, 2000. On May 25, 2000, the DSB agreed to the appointment of Professor Yasuhei Taniguchi of Japan to serve through December 10, 2003, the remainder of the term of Mr. Beeby, who passed away on March 19, 2000. On September 25, 2001, the DSB agreed to appoint Mr. Luiz Olavo Baptista of Brazil, Mr. John S Lockhart of Australia and Mr. Giorgio Sacerdoti of Italy to a term of four years commencing on December 19, 2001. The names and biographical data for the Appellate Body members are included in Annex II.

The Appellate Body has also adopted Working Procedures for Appellate Review. On February 28, 1997, the Appellate Body issued a revision of the Working Procedures, providing for a two-year term for the first Chairman, and one-year terms for subsequent Chairmen. Mr. Lacarte-Muró, the first Chairman, served until February 7, 1998; Mr. Beeby served as Chairman from February 7, 1998 to February 6, 1999; Mr. El-Naggar served as Chairman from February 7, 1999 to February 6, 2000; and Mr. Feliciano served as Chairman from February 7, 2000 to February 6, 2001; and Mr. Bacchus's term as Chairman runs from February 7, 2001 to February 6, 2002.

In 2001, the Appellate Body issued nine reports, of which six involved the United States as a party and are discussed in detail below. The three other reports concerned France's measures

affecting asbestos and asbestos-containing products, Thailand's anti-dumping duties on steel and H-beams from Poland, and the European Communities' anti-dumping duties on cotton type bed linen from India. The United States participated in all three of these proceedings as an interested third party.

Prospects for 2002

In 2002, we expect that the DSB will continue to focus on the administration of the dispute settlement process in the context of individual disputes. Experience gained with the DSU will be incorporated into the U.S. litigation and negotiation strategy for enforcing U.S. WTO rights, as well as the U.S. position on DSU reform. DSB Members will continue to consider reform proposals in 2002.

2. Dispute Settlement Activity in 2001

During its first seven years in operation, 242 requests for consultations (22 in 1995, 42 in1996, 46 in 1997, 44 in 1998, 31 in 1999, 30 in 2000, and 27 in 2001) concerning 180 distinct matters were filed with the WTO. During that period, the United States filed 57 requests for consultations and received 52 requests for consultations on U.S. measures. A number of disputes commenced in earlier years continued to be active in 2001. What follows is a description of those disputes in which the United States was either a complainant, defendant, or third party during the past year.

a. Disputes Brought by the United States

In 2001, the United States continued to be one of the most active participants in the WTO dispute settlement process. This section includes brief summaries of dispute settlement activity in 2001 with respect to those cases in which the United States was a complainant. As demonstrated by these summaries, the WTO dispute settlement process has proven to be an effective tool in combating barriers to U.S. exports. Indeed, in a number of cases the United States has been able to achieve satisfactory outcomes invoking the consultation provisions of the dispute settlement procedures, without recourse to formal panel proceedings.

Argentina—Patent and test data protection for pharmaceuticals and agricultural chemicals

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). Consultations were held on June 15, 1999, and again on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that have arisen as a result of Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations began July 17, 2000, and continued constructively through 2001.

Belgium—Rice imports

Belgian customs authorities disregarded the actual transaction values of rice imported from the United States from July 1, 1997 to December 31, 1998, in computing the applicable customs duties. The United States believes that this failure to use transaction values violated Belgium's WTO obligations. By not using transaction values to compute customs duties, Belgium assessed duties on rice that were higher than the levels provided for in the "Schedule of Specific Commitments of the European

Communities and Their Member States." Belgium's administration of its tariff regime for rice, moreover, has contributed to substantial uncertainty regarding the rate of duty that will be applicable to shipments of imported rice. On October 12, 2000, the United States requested consultations with Belgium regarding this matter, and consultations were held November 30, 2000. On January 19, 2001, the United States requested the establishment of a panel. The panel request was revised on March 1, and a panel was established on March 12, 2001. The following panelists were selected by the WTO Director-General: Ambassador Mohammed Nacer Benjelloun-Touimi, Chair; and Professor Donald MacLaren and Mr. Jooha Woo, Members. However, at the request of the parties, the panel did not commence its work, since discussions aimed at settlement were continuing. On November 19, 2001, Belgium issued a refund to the affected U.S. company for excess duties it had collected. Accordingly, on November 30, 2001, USTR announced the favorable resolution of this dispute.

Brazil—Customs valuation

The United States requested consultations on May 31, 2000, with Brazil regarding its customs valuation regime. U.S. exporters of textile products reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an interested third party in a dispute initiated by the EU regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continued to monitor the situation in 2001.

Brazil—Patent protection

Although Brazil has a largely WTO-consistent patent regime that has been in place for some time, on May 31, 2000, the United States requested consultations with Brazil regarding a provision in its patent law providing for patent owners to manufacture their products in Brazil in order to maintain full patent rights. Consultations were held June 29, 2000. Additional consultations were held December 1, 2000, and thereafter the United States requested the establishment of a panel. On June 25, 2001, the USTR announced that the United States and Brazil had agreed to transfer their disagreement over this provision from formal WTO litigation to a newly created bilateral consultative mechanism. The agreement was a step forward both for the common fight against HIV/AIDS and the constructive handling of this patent dispute. It will permit more effective and less confrontational consideration of intellectual property issues and ensure that such discussions do not divert attention away from the shared goal of combating the spread of HIV/AIDS. The United States and Brazil set up the U.S.-Brazil Consultative Mechanism to improve their capacity to find creative solutions for trade and investment issues of mutual concern. This forum should prove useful as the United States and Brazil continue to work to accommodate their mutual desire to protect intellectual property rights without compromising their efforts to combat HIV/AIDS.

Canada—Export subsidies and tariff-rate quotas on dairy products

The United States prevailed on its claim that Canada was providing subsidies to exports of dairy products without regard to its Uruguay Round commitment to reduce the quantity of subsidized exports, and was maintaining a tariff-rate quota (TRQ) on fluid milk under which it only permitted the entry of milk in retail-sized containers by Canadian residents for their personal use. On August 12, 1998, the following panelists were selected, with the consent of the parties, to review the U.S. claims:

Professor Tommy Koh, Chairman; Mr. Guillermo Aguilar Alvarez and Professor Ernst-Ulrich Petersmann, Members. On May 17, 1999, the panel issued its report upholding U.S. arguments by finding that Canada's export subsidies are inconsistent with the Agreement on Agriculture, and that Canada's practice of restricting the import of milk to retail-sized containers imported by Canadian residents is inconsistent with its obligations under the GATT 1994. On October 13, 1999, the Appellate Body issued its report upholding the panel's finding that Canada's export subsidies are inconsistent with its GATT obligations. The panel and Appellate Body reports were adopted by the Dispute Settlement Body (DSB) on October 27, 1999. On December 22, 1999, the parties reached agreement on the time period for implementation by Canada. Under this agreement, Canada was to implement the DSB's recommendations and rulings in stages; Canada has already implemented some measures, and was to complete full implementation no later than January 31, 2001.

While Canada has eliminated one of the export subsidies subject to the DSB findings, all of its exporting provinces have instituted substitute measures that appear to duplicate most of the elements of the export subsidies which they replace. Information regarding the new measures indicates that only exporters have access to milk at prices that are below domestic market levels in Canada. Therefore, on February 16, 2001, the United States requested that the DSB reestablish the panel to review Canada's compliance measures. At the same time, the United States requested authorization to withdraw concessions benefitting goods from Canada if the panel agrees that Canada has failed to comply with rulings against it. The panel was reestablished on March 1, 2001, with Mr. Peter Palečka replacing Professor Koh, who was no longer available to serve, and with Professor Petersmann serving as Chairman. The panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continues to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 3, 2001, the Appellate Body concluded that it did not have enough facts to make a ruling against Canada. As a result, the United States requested that the panel be reconvened again for the United States to present additional factual information.

Canada—Patent protection term

The United States prevailed in this dispute, in which the United States argued that the Canadian Patent Act is inconsistent with the TRIPS Agreement. The TRIPS Agreement obligates WTO Members to grant a term of protection for patents that runs at least 20 years from the filing date of the underlying application, and requires each Member to grant this minimum term to all patents existing as of the date of application of the Agreement to that Member. Under the Canadian Patent Act, the term granted to patents issued on the basis of applications filed before October 1, 1989, is only 17 years from the date on which the patent is issued. The United States initiated this dispute on May 6, 1999. The panel was established on September 22, 1999, and on October 22, 1999, the Director-General composed the panel as follows: Mr. Stuart Harbinson, Chairman; Mr. Sergio Escudero and Mr. Alberto Heimler, Members. In its report, circulated on May 5, 2000, the panel agreed with the United States that Canada's law fails to provide the patent term guaranteed by TRIPS. On September 18, 2000, the Appellate Body affirmed the panel's rulings. The DSB adopted the reports of the panel and Appellate Body on October 12, 2000. The United States asked an arbitrator to determine the reasonable period of time for Canada to comply, and on February 28, 2001, the arbitrator determined that the deadline for compliance shall be August 12, 2001. Effective July 12, 2001, Canada announced that it had enacted an amendment to its Patent Act to bring it into conformity with its obligations under the TRIPS Agreement.

Denmark—Measures affecting the enforcement of intellectual property rights

The United States requested consultations with Denmark in May 1997 because of Denmark's failure to make available *ex parte* search remedies in intellectual property enforcement actions, as required by Article 50 of the TRIPS Agreement. After the United States and Denmark held several rounds of formal and informal consultations, Denmark formed a Legal Preparatory Committee to gather information and views, and ultimately to draft appropriate legislation. In June 2000, the Legal Preparatory Committee issued its report recommending an amendment to Danish IP legislation so as to make an *ex parte* search provision available. Soon thereafter, the Danish Government formally introduced legislation into its Parliament to amend Denmark's intellectual property rights regime. On March 20, 2001, the Danish Parliament approved the legislation, which was then signed into law on March 28, 2001.

EU—Regime for the importation, sale and distribution of bananas

The United States, along with Ecuador, Guatemala, Honduras, and Mexico, successfully challenged the EU banana regime under WTO dispute settlement procedures. The regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. On May 29, 1996, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. Stuart Harbinson, Chairman; Mr. Kym Anderson and Mr. Christian Häberli, Members. On May 22, 1997, the panel found that the EU banana regime violated WTO rules; the Appellate Body upheld the panel's decision on September 9, 1997. At the request of the complaining parties, the compliance period was set by arbitration and expired on January 1, 1999. However, on January 1, 1999, the EU adopted a regime that perpetuated the WTO violations identified by the panel and the Appellate Body. The United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which is equivalent to the nullification or impairment sustained by the United States. The EU exercised its right to request arbitration concerning the amount of the suspension and on April 6, 1999, the arbitrators determined the level of suspension to be $191.4 million. On April 19, 1999, the DSB authorized the United States to suspend such concessions, and the United States imposed 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $191.4 million.

On April 11, 2001, the United States and the EU agreed to an Understanding that identified the means by which the dispute could be resolved. Pursuant to the Understanding, the EU implemented a revised import licensing regime for its banana tariff-rate quota on July 1, 2001, and allocated a significantly increased number of licenses to U.S. operators. The United States thereupon suspended its increased duties. The EU implemented an additional change to the tariff-rate quota by January 1, 2002, which resulted in further increases of licenses allocated to US operators.

EU—Import surcharge on corn gluten feed

On August 20, 1998, the EU published Council Regulation No. 1804/98 of August 14, 1998, which imposed a tariff-rate quota of five euros per metric ton ("MT") on the first 2,730,000 MT of corn gluten feed imported into the EU from the United States. The quota was made applicable beginning on the earlier of June 1, 2001 or five days after the date of WTO Dispute Settlement Body's adoption of a decision that the U.S. safeguard measure on wheat gluten was "incompatible with the WTO Agreements." The EU cited Articles 8.2 and 8.3 of the Safeguards Agreement as authority for this measure, and the DSB adoption of recommendations and rulings in *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities* triggered the application of the TRQ effective January 24, 2001. The United States considered that the EU failed to

satisfy the requirements of Articles 8.1, 8.2, and 8.3 of the Safeguards Agreement for a Member to suspend concessions or other obligations. Therefore, on January 25, 2001, the United States requested consultations with the EU regarding this matter. The consultations were held on April 24, 2001. The EU regulation provided for the quota on corn gluten feed to apply until the U.S. safeguard measure on imports of wheat gluten was lifted. Since the U.S. safeguard measure expired on June 1, 2001, and was not renewed, the EU tariff-rate quota on corn gluten feed no longer applied to imports from the United States after that date.

EU—Protection of trademarks and geographical indications for agricultural products and foodstuffs

EU Regulation 2081/92, as amended, does not provide national treatment with respect to geographical indications for agricultural products and foodstuffs; it also does not provide sufficient protection to pre-existing trademarks that are similar or identical to such geographical indications. The United States considers this measure inconsistent with the EU's obligations under the TRIPS Agreement. The United States requested consultations regarding this matter on June 1, 1999. Consultations were first held July 9, 1999, and continued through 2001.

India—Import quotas on agricultural, textile and industrial products

The United States prevailed in its challenge to India's import restrictions on more than 2,700 tariff items. These restrictions are no longer justified under the balance-of-payments ("BOP") exceptions of the GATT 1994. On February 20, 1998, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. Celso Lafer, Chairman; Prof. Paul Demaret and Prof. Richard Snape, Members. On April 6, 1999, the panel circulated its report, finding that India's quantitative restrictions on imports violate the WTO Agreement, and rejecting India's claim that its BOP situation justified them. The Appellate Body confirmed the panel's determination on August 23, 1999. The DSB adopted the panel and Appellate Body reports at its meeting on September 22, 1999. The United States and India agreed that India would implement the DSB's recommendations and rulings by April 1, 2000 for approximately 73 percent of the tariff items at issue in this case, and by April 1, 2001 for the remaining items. The liberalization due on April 1, 2000, took place on time. On April 1, 2001, India completed its compliance with the WTO ruling. In announcing India's new export-import policy on March 31, 2001, Indian Commerce and Industry Minister Maran explicitly cited the WTO ruling as the reason for removing these quantitative restrictions.

India—Measures affecting the motor vehicle sector

In order to obtain import licenses for certain motor vehicle parts and components, India requires manufacturing firms in the motor vehicle sector to achieve specified levels of local content, to neutralize foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period, and to limit imports to a value based on the previous year's imports. Considering these requirements inconsistent with India's obligations under the GATT 1994 and the Agreement on Trade-related Investment Measures ("TRIMS Agreement"), the United States requested consultations on June 2, 1999. Consultations were held July 20, 1999. The matter remained unresolved following consultations and, on May 15, 2000, the United States requested the establishment of a panel. A panel was established on July 27, 2000, and on November 17, 2000, that panel was merged with a panel established at the request of the EU regarding the same matter. On November 24, 2000, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. John Weekes, Chairman; Ms. Gloria Peña and Mr. Jeffrey Waincymer, Members. On December 21, 2001, the panel issued its report. The panel

found that the measures in question were inconsistent with India's obligations under GATT Articles III:4 and XI:1, and it recommended that India bring the measure into compliance with its obligations. The panel exercised judicial economy and did not reach the claims made under the TRIMS Agreement. India has decided to appeal the panel's report.

Korea—Measures affecting imports of fresh, chilled, and frozen beef

The United States prevailed in this dispute, which challenged Korea's regulatory scheme that discriminates against imported beef by confining sales of imported beef to specialized stores, limiting the manner of its display, and otherwise constraining opportunities for the sale of imported beef. In addition to the regulatory scheme, the United States contended that Korea imposed a markup on sales of imported beef, limited import authority to certain so-called "super-groups" and the Livestock Producers Marketing Organization ("LPMO"), and provided domestic support to the cattle industry in Korea in amounts that cause Korea to exceed its aggregate measure of support as reflected in Korea's WTO schedule. The United States alleged that these restrictions were inconsistent with the GATT 1994, the Agreement on Agriculture, and the Import Licensing Agreement.

Consultations were held March 11-12, 1999, and a panel was established on May 26, 1999. Australia also requested a panel on the same measures, and the two disputes were consolidated. On August 4, 1999, the following panelists were selected, with the consent of the parties, to review the United States and Australian claims: Mr. Lars Anell, Chairman; Mr. Paul Demaret and Mr. Alan Matthews, Members. The final panel report, released on July 31, 2000, found Korea in violation of its WTO obligations. Korea appealed the panel's rulings on September 11, 2000. On December 11, 2000, the Appellate Body upheld the panel on all significant issues. The reports were adopted on January 10, 2001. On February 1, 2001, Korea announced its intention to implement the DSB recommendations and rulings by September 10, 2001 in a manner that respects Korea's WTO obligations. At a DSB meeting on September 25, 2001, Korea reported that it had implemented the DSB's recommendations and rulings.

Mexico—Antidumping investigation of high fructose corn syrup from the United States

On January 28, 2000, a WTO panel ruled that Mexico's imposition of antidumping duties on U.S. imports of high fructose corn syrup ("HFCS") was inconsistent with the requirements of the Antidumping Agreements in several respects. The panel, which was composed on January 13, 1999, with the consent of the parties, included: Mr. Christer Manhusen, Chairman; Mr. Gerald Salembier and Mr. Edwin Vermulst, Members. Mexico had begun this antidumping investigation based on a petition by the Mexican sugar industry. The United States successfully demonstrated that Mexico's threat of injury determination and imposition of provisional and final antidumping duties was flawed. Mexico did not appeal, and the panel report was adopted on February 24, 2000. On April 10, Mexico agreed to implement the panel recommendation by September 22, 2000.

On September 20, 2000, Mexico announced that it had conformed to the panel's recommendations and rulings by redetermining that there was a threat of injury to the domestic sugar industry and maintaining the subject antidumping duties, while at the same time determining that the provisional amounts paid from June 26, 1997 to January 23, 1998, would be refunded with interest. The United States, however, disagreed that such action resulted in full implementation of the panel's recommendations and rulings. Therefore, on October 12, 2000, the United States requested that the panel be reconvened to examine the matter. The panel was established on October 23, 2000, for that purpose, with Mr. Paul O'Connor replacing Mr. Vermulst, who no

longer was available to serve. In a report released on June 22, 2001, the panel agreed with the United States that Mexico had failed to cure the flaws already found in its original determination. Mexico appealed that finding. The Appellate Body released its report on October 22, 2001, in which it agreed with the panel's findings. The DSB adopted the Appellate Body and panel reports on November 21, 2001.

Mexico—Measures affecting trade in live swine

On July 10, 2000, the United States requested consultations with Mexico regarding Mexico's October 20, 1999, definitive antidumping measure involving live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. The United States considers that Mexico made a determination of threat of material injury that appears inconsistent with the Antidumping Agreement, and that other actions by Mexico in the conduct of its investigation are also in violation of the Agreement. In addition, the United States considers that, by maintaining restrictions on the importation of live swine weighing 110 kilograms or more, Mexico was acting contrary to its obligations under the Agreement on Agriculture, the SPS Agreement, the Agreement on Technical Barriers to Trade ("TBT Agreement"), and the GATT 1994. Consultations were held September 7, 2000. Subsequent to the consultations, Mexico issued a protocol which has allowed a resumption of U.S. shipments of live swine weighing 110 kilograms or more into Mexico. At about the same time, Mexico self-initiated a review of its threat of injury determination based on information, including a shortage of slaughter hogs, that suggests that market conditions have changed substantially in Mexico.

Mexico—Measures affecting telecommunications services

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the General Agreement on Trade in Services (``GATS'') with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico. Prior to such consultations, which were held on October 10, 2000, the Government of Mexico issued rules to regulate the anti-competitive practices of Telmex (Mexico's major telecommunications supplier) and announced significant reductions in long-distance interconnection rates for 2001. Nevertheless, given that Mexico still had not fully addressed all U.S. concerns, the United States, on November 10, 2000, filed a request for establishment of a panel as well as an additional request for consultations on Mexico's newly issued measures. Those consultations were held on January 16, 2001.

Philippines—Measures affecting trade and investment in the motor vehicles sector

On May 24, 2000, the United States requested consultations with the Philippines regarding measures affecting trade and investment in the motor vehicle sector (*i.e.*, automobiles, motorcycles and commercial vehicles). Among other things, the measures require producers to incorporate specified amounts of locally-produced inputs, precluding the purchase of U.S. parts. There is also a requirement that imports be balanced in an amount related to a company's foreign exchange earnings. These measures substantially restrict the sale of U.S. motor vehicle parts and inhibit the free flow of trade and investment, which appear to violate the TRIMS Agreement. Under WTO rules, the

Philippines was required to remove these measures by January 1, 2000, but recently requested an extension of five years pursuant to the TRIMS Agreement to bring these measures into WTO compliance. Consultations were held July 12, 2000. On October 12, 2000, the United States requested the establishment of a panel. A panel was established on November 17, 2000, but at the parties' request it was not composed because settlement discussions were continuing. An agreement to settle this dispute was concluded on December 18, 2001.

Romania—Minimum import prices

The United States requested consultations on May 31, 2000, with Romania regarding its customs valuation regime, which uses officially-established prices for imported products such as clothing, various agricultural products, including poultry, and certain types of distilled spirits. This appears to violate Romania's obligations under the Customs Valuation Agreement, the GATT 1994, the Agreement on Textiles and Clothing, and the Agreement on Agriculture. Consultations were held July 13, 2000, and in May 2001 a mutually satisfactory solution was reached.

b. Disputes Brought Against the United States

Section 124 of the URAA requires *inter alia* that the Annual Report on the WTO describe, for the preceding fiscal year of the WTO, each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the status of the proceeding, and the matter at issue; and each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law. This section includes summaries of dispute settlement activity in 2001 with respect to those cases in which the United States was a defendant.

United States—Measures relating to the importation of shrimp and shrimp products

India, Malaysia, Pakistan, and Thailand challenged U.S. restrictions on imports of shrimp and shrimp products harvested in a manner harmful to endangered species of sea turtles. A dispute settlement panel, agreed upon by the parties on April 15, 1997, and consisting of Mr. Michael Cartland (Chairman), and Mr. Carlos Cozendey and Mr. Kilian Delbrück (Members), found that the U.S. import restrictions were inconsistent with WTO rules. The United States appealed, and on October 12, 1998, the Appellate Body partially reversed the panel's ruling. The Appellate Body confirmed that WTO rules allow WTO Members to condition access to their markets on compliance with certain policies such as environmental conservation, and agreed that the U.S. "shrimp-turtle law" was a permissible measure adopted for the purpose of sea turtle conservation. The Appellate Body also found that WTO rules permit panels to accept unsolicited amicus briefs from non-governmental organizations. The Appellate Body, however, found fault with certain aspects of the U.S. implementation of the shrimp-turtle law. The reports were adopted on November 6, 1998. On November 25, 1998, the United States informed the DSB of its intention to implement the recommendations and rulings of the DSB in a manner consistent not only with WTO obligations but also with the firm commitment of the United States to protect endangered species of sea turtles. The United States and the complaining parties reached agreement on an implementation period of 13 months from the date of adoption of the reports. Upon completion of the implementation period in December 1999, the United States notified the DSB that it had completed implementation of the Appellate Body report by modifying the implementation of the shrimp-turtle law in accordance with the recommendations of the DSB. On October 23, 2000, Malaysia requested that the original panel examine whether the United States had fully implemented the DSB's recommendations, and the panel was reestablished for that purpose. On June 15,

2001, the panel released its report, finding that the United States' implementation of its sea turtle protection law is fully consistent with WTO rules and complies with earlier recommendations of the DSB. Malaysia appealed that ruling. The Appellate Body released its report on October 22, 2001, in which it agreed with the panel's report. The panel and Appellate Body reports were adopted on November 21, 2001.

United States—Foreign Sales Corporation ("FSC") tax provisions

The EU challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU 's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel. The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15, 2000, the President signed legislation that repealed and replaced the FSC provisions, but the EU claimed that the new legislation failed to bring the US into compliance with its WTO obligations.

In anticipation of a dispute over compliance, the United States and EU reached agreement in September 2000 on the procedures to review U.S. compliance with the WTO recommendations and rulings. Pursuant to a request approved by the WTO, the deadline for U.S. compliance was changed from October 1, 2000, as recommended by the panel, to November 1, 2000. The procedural agreement also outlined certain procedural steps to be taken after passage of US legislation to replace the FSC. The essential feature of the agreement provided for sequencing of WTO procedures as follows: (1) a panel would determine the WTO-consistency of FSC replacement legislation (the parties retained the right to appeal); (2) only after the appeal process was exhausted would arbitration over the appropriate level of retaliation be conducted if the replacement legislation was found WTO-inconsistent. Pursuant to the procedural agreement, on November 17, 2000 the EU requested authority to impose countermeasures and suspend concessions in the amount of $4.043 billion. On November 27, 2000 the United States objected to this amount, thereby referring the matter to arbitration (which was suspended pending a review of the legislation's WTO-consistency). On December 7, 2000 the EU requested establishment of a panel to review the legislation, and the panel was reestablished for this purpose on December 20, 2000. In a report circulated on August 20, 2001, the panel found that the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 does not bring the United States into conformity with its WTO obligations. The United States appealed the

panel ruling on October 15, 2001. On January 14, 2002, the Appellate Body circulated its report, affirming the panel's findings. The panel and Appellate Body reports were adopted on January 29, 2002, and the arbitration over the appropriate level of retaliation resumed.

United States—1916 Revenue Act

Title VII of the Revenue Act of 1916 (15 U.S.C. §§ 71-74, entitled "Unfair Competition"), often referred to as the Antidumping Act of 1916, allows for private claims against, and criminal prosecutions of, parties that import or assist in importing goods into the United States at a price substantially less than the actual market value or wholesale price. On April 1, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Johann Human, Chairman; Mr. Dimitrij Grĕar and Mr. Eugeniusz Piontek, Members. On January 29, 1999, the panel found that the 1916 Act is inconsistent with WTO rules because the specific intent requirement of the Act does not satisfy the material injury test required by the Antidumping Agreement. The panel also found that civil and criminal penalties in the 1916 Act go beyond the provisions of the Antidumping Agreement. The panel report was circulated on March 31, 2000. Separately, Japan sought its own rulings on the same matter from the same panelists; that report was circulated on May 29, 2000. On the same day, the United States filed notices of appeal for both cases, which were consolidated into one Appellate Body proceeding. The Appellate Body report, issued August 28, 2000, affirmed the panel reports. This ruling, however, has no effect on the U.S. antidumping law, as codified in the Tariff Act of 1930, as amended. The panel and Appellate Body reports were adopted by the DSB on September 26, 2000. On November 17, 2000, the EU and Japan requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. A.V. Ganesan was appointed to serve as arbitrator. On February 28, 2001, he determined that the deadline for implementation was July 26, 2001. On July 24, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001. Legislation to repeal the Act and extinguish cases pending under the Act was introduced in the House on December 20, 2001, but no action was taken.

United States—Section 110(5) of the Copyright Act

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act permits certain retail establishments to play radio or television music without paying royalties to songwriters and music publishers. The EU claimed that, as a result of this exception, the United States is in violation of its TRIPS obligations. Consultations with the EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director-General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The panel issued its final report on June 15, 2000, and found that one of the two exemptions found in section 110(5) is inconsistent with the United States' WTO obligations. The panel report was adopted by the DSB on July 27, 2000, and the United States has informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the EU requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator. He determined that the deadline for implementation should be July 27, 2001. On July 24, 2001, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the EU requested arbitration to determine the level of nullification or impairment of benefits to the EU

as a result of section 110(5)(B). In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the EU in this case is $1.1 million per year. Discussions were continuing at the end of 2001 to find a means to resolve this dispute.

United States—Definitive safeguard measure on imports of wheat gluten from the European Communities

By Presidential Proclamation 7103 of May 30, 1998, the United States imposed safeguard measures in the form of a quantitative limitation on imports of wheat gluten from the EU. On March 17, 1999, the EU requested consultations concerning this safeguard measure, asserting that it is in violation of the Agreement on Safeguards, the Agreement on Agriculture, and the GATT 1994. Consultations were held on May 3, 1999. A panel was established July 26, 1999. On October 11, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Wieslaw Karsz, Chairman; Ms. Usha Dwarka-Canabady and Mr. Alvaro Espinoza, Members. Subsequently, Mr. Maamoun Abdel-Fattah replaced Mr. Karsz as Chairman, with the consent of the parties. The panel report was released on July 31, 2000. The panel found that certain aspects of the U.S. measure were inconsistent with WTO rules. The United States filed its notice of appeal on September 26, 2000. On December 22, 2000, the Appellate Body issued its report, reversing the panel's conclusion on causation, the key issue in the case, thereby upholding the U.S. causation test in Section 201 of the Trade Act of 1974. However, the Appellate Body ruled against the United States on two issues. The reports were adopted on January 19, 2001. On February 16, 2001, the United States stated its intention to implement the DSB recommendation, and agreed to do so by June 2, 2001.

Pursuant to section 129(a)(4) of the Uruguay Round Agreements Act, the U.S. Trade Representative requested the U.S. International Trade Commission (ITC) to issue a determination that would render the ITC's action in connection with the wheat gluten safeguard not inconsistent with the findings of the Appellate Body. The ITC issued that determination in May 2001, bringing the safeguard measure into conformity with U.S. WTO obligations. On June 1, 2001, the Administration announced an innovative approach to help the U.S. wheat gluten industry move beyond the safeguard which, as of that date, had been in place for three years. Instead of extending the safeguard measure, which would have triggered the continuation of EU retaliatory tariffs on U.S. corn gluten exports to Europe, the Administration ended the safeguard but agreed to provide the wheat gluten industry $40 million in adjustment assistance over two years to complete its transition to competitiveness.

United States—Section 211 Omnibus Appropriations Act

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questions the consistency of Section 211 with the TRIPS Agreement, and it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU the WTO Director-General composed the panel on October 26, 2000, as follows: Mr. Wade Armstrong, Chairman; Mr. François Dessemontet and Mr. Armand de Mestral, Members. The panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The EU appealed on October 4, 2001. The Appellate Body issued its report on January 2, 2002. The Appellate Body reversed the panel's one finding against the United States, and upheld the panel's favorable

findings that WTO Members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach the national treatment and most favored nation obligations of the TRIPS Agreement. The panel and Appellate Body reports were adopted on February 1,2002.

United States—Safeguard measure on imports of fresh, chilled, or frozen lamb

On July 22, 1999, the United States imposed a safeguard measure on imports of lamb meat from New Zealand and Australia, pursuant to section 203 of the Trade Act of 1974. New Zealand and Australia requested consultations on July 16 and July 23, 1999, respectively, claiming violations of the GATT 1994 and the Agreement on Safeguards. Consultations were held August 26, 1999. A panel was established on November 18, 1999, and the two cases were consolidated. On March 21, 2000, the following panelists were selected with the consent of the parties: Prof. Tommy Koh, Chairman; Prof. Meinhard Hilf and Mr. Shishir Priyadarshi, Members. The panel issued its report on December 21, 2000, finding certain aspects of the U.S. safeguard measure to be inconsistent with WTO rules. The United States filed a notice of appeal on January 31, 2001, and on May 1, 2001, the Appellate Body issued its report, reversing in part and affirming in part. After consultations with the U.S. industry, the United States decided to continue to provide adjustment assistance to the industry through FY 2003, and to terminate the safeguard on November 15, 2001.

United States—Antidumping measures on stainless steel from Korea

The Government of Korea alleged that several errors were made by the U.S. Department of Commerce and the USITC in the preliminary and final determinations of *Stainless Steel Plate in Coils from Korea*, dated January 20, 1999, and June 8, 1999, respectively. Korea claimed that these errors resulted in improper findings and deficient consultations as well as the imposition, calculation and collection of antidumping margins which are incompatible with the obligations of the United States under the Antidumping Agreement and the GATT 1994. On October 14, 1999, Korea requested the establishment of a panel. A panel was established on November 18, 1999, and on March 24, 2000, the panel was composed with the consent of the parties as follows: Mr. José Antonio S. Buencamino, Chairman; Mr. G. Bruce Cullen and Ms. Enie Neri de Ross, Members. In its report of December 14, 2000, the panel accepted some of Korea's arguments, finding that Commerce's treatment of local sales, unpaid sales, and multiple averaging periods was inconsistent with the WTO Antidumping Agreement. However, the United States prevailed in its defense of some of Korea's key claims. Neither party appealed, and the panel report was adopted on February 1. On March 1, 2001, the United States stated its intention to implement the DSB recommendation, and agreed to do so by September 1, 2001. Pursuant to section 129(b)(2) of the Uruguay Round Agreements Act, the U.S. Trade Representative requested the Department of Commerce to issue a determination that would render the Department's determinations of dumping in both investigations consistent with the findings of the panel. Re-determinations in both the stainless steel sheet and the stainless steel plate investigations were effective on August 28, 2001.

United States—Antidumping measures on certain hot-rolled steel products from Japan

Japan alleged that the preliminary and final determinations of the Department of Commerce and the USITC in their antidumping investigations of certain hot-rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and

regulations violate the GATT 1994, as well as the Antidumping Agreement and the Agreement Establishing the WTO. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 1999, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman; Mr. Yanyong Phuangrach and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that particular aspects of the antidumping duty calculation were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report. The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. On September 10, 2001, at a meeting of the DSB, the United States stated its intention to implement the recommendations and rulings of the DSB in a manner that respects U.S. WTO obligations, and that it would need a reasonable period of time in which to do so. The United States and Japan were unable to reach agreement on a reasonable period of time for compliance, and on November 20, 2001, Japan referred the question to arbitration.

United States—Transitional safeguard measure on combed cotton yarn from Pakistan

This dispute involved a transitional safeguard measure applied by the United States from March 17, 1999, on imports of combed cotton yarn from Pakistan. The WTO Textiles Monitoring Body ("TMB") reviewed this matter during 1999. When the matter was not resolved in the TMB, on April 3, 2000, Pakistan requested the establishment of a panel, which was established on June 19, 2000. On August 30, 2000, the following panelists were selected with the consent of the parties: Mr. Wilhelm Meier, Chairman; Mr. Carlos Antônio da Rocha Paranhos and Mr. Virachai Plasai, Members. On May 31, 2001, the panel report was circulated, finding that the U.S. measure was inconsistent with the WTO Agreement on Textiles and Clothing. The United States filed an appeal with the WTO Appellate Body. On October 8, 2001, the Appellate Body released its report, which affirmed the panel's finding of inconsistency, but importantly ruled that the panel exceeded its mandate by considering evidence that was not in existence at the time that the U.S. Committee on Implementation of Textile Agreements ("CITA") established the safeguard. The Appellate Body report was adopted by the Dispute Settlement Body on November 5, 2001. The United States removed its restrictions on yarn from Pakistan effective on November 9, 2001, and informed the Dispute Settlement Body on November 21 that it had implemented the WTO recommendation.

United States–Measures Treating Export Restraints as Subsidies

On May 19, 2000, Canada requested consultations with the United States about U.S. Government statements regarding treatment of a restriction on exports of a product as a countervailable subsidy to other products (those made by using or incorporating the restricted product), if the domestic price of the restricted product is affected by the export restriction. The United States agreed to consult with Canada, notwithstanding Canada's failure to identify a "measure" in its request for consultations. Consultations were held on June 15, 2000. Canada then requested the establishment of a panel on August 4, 2000, identifying a provision of the U.S. countervailing duty statute and "US practice thereunder" as the challenged measures. A panel was established on September 11, 2000. On October 23, 2000, the following panelists were selected with the consent of the parties: Mr. Michael Cartland, Chairman; Mr. Scott Gallacher and Mr. Richard Plender, Members. On June 29, 2001, the panel released its report, rejecting Canada's claim that the U.S. countervailing duty law violates WTO rules. As a result, the panel did not recommend that the United States change its law. The panel report was adopted on August 23, 2001.

United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea

On June 13, 2000, Korea requested consultations regarding safeguard measures imposed by the United States on imports of circular welded carbon quality line pipe. These measures were proclaimed by the United States on February 18, 2000, and introduced on March 1, 2000. Korea argues that such measures are inconsistent with the Agreement on Safeguards and the GATT 1994. Consultations were held July 28, 2000. On September 14, 2000, Korea requested the establishment of a panel. A panel was established on October 23, 2000, and composed of the following panelists: Mr. Dariusz Rosati, Chairman (selected by the Director-General); Robert Azevedo and Eduardo Bianchi, Members (selected by mutual agreement of the parties). The panel report was circulated on October 29, 2001. The panel found that the U.S. measure violates the Safeguards Agreement, but at the same time rejected several of Korea's claims related to both the measure itself and the investigation. Further, the panel agreed that the United States could exclude imports from its NAFTA partners, Canada and Mexico, from the line pipe measure. The U.S. notice of appeal was filed with the WTO Appellate Body on November 19, 2001.

United States—Antidumping measures and countervailing measures on steel plate from India

India contended that the Department of Commerce made several errors in its final determinations regarding certain cut-to-length carbon quality steel plate products from India, dated December 13, 1999 and amended on February 10, 2000. India also argued that the USITC made errors with respect to the negligibility, cumulation, and material injury caused by such products. India claimed that these errors were based on deficient procedures contained in the U.S. antidumping and countervailing duty laws, and thus raised questions concerning the obligations of the United States under the Antidumping Agreement, the GATT 1994, the Subsidies Agreement, and the Agreement Establishing the WTO. India requested consultations with the United States regarding this matter on October 4, 2000. The United States and India held consultations on November 21, 2000, and on July 24, 2001. India then filed a panel request, which focused on a subset of the claims it had raised during consultations. The panel is composed of: Mr. Timothy Groser, Chair, and Ms. Salmiah Ramli, Member (selected by mutual agreement of the parties); and Ms. E. Luz Reyes, Member (selected by the Director-General).

United States—Countervailing duty measures concerning certain products from the European Communities

On November 13, 2000, the EU requested WTO dispute settlement consultations in 14 separate U.S. countervailing duty proceedings covering imports of steel and certain other products from member states of the EU, all with respect to the Department of Commerce's "change in ownership" (or "privatization") methodology that was challenged successfully by the EU in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. A panel was established at the EU's request on September 10, 2001. In its panel request, the EU challenges 12 separate US CVD proceedings, as well as Section 771(5)(F) of the Tariff Act of 1930. At the request of the EU the WTO Director-General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.

United States—Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany

Also on November 13, 2000, the EU requested dispute settlement consultations with respect to the Department of Commerce's countervailing duty order on certain corrosion-resistant flat rolled steel products from Germany. In a "sunset review", the Department of Commerce declined to revoke the order based on a finding that subsidization would continue at a rate of 0.54 percent. The EU alleges that this action violates the Subsidies Agreement, asserting that countervailing duty orders must be revoked where the rate of subsidization found is less than the 1 percent *de minimis* standard for initial countervailing duty investigations. The United States and the EU held consultations pursuant to this request on December 8, 2000. A second round of consultations was held on March 21, 2001, in which the EU made a new allegation that the automatic initiation of sunset reviews by the United States is inconsistent with the SCM Agreement. A panel was established at the EU's request on September 10, 2001. The panel is composed of: Mr. Hugh McPhail, Chair, and Mr. Wieslaw Karsz, Member (selected by agreement of the parties); and Mr. Ronald Erdmann, Member (selected by the Director-General).

United States—Safeguard measures on imports of line pipe and wire rod from the European Communities

On December 1, 2000, the EU requested consultations with the United States regarding U.S. safeguard measures on imports of circular welded carbon quality line pipe and on wire rod. The EU argued that these measures are inconsistent with the Agreement on Safeguards and the GATT 1994. The EU also claimed that certain aspects of the underlying U.S. safeguards legislation – Sections 201 and 202 of the Trade Act of 1974 – and Section 311 of the NAFTA Implementation Act prevented the United States from respecting certain provisions of the Agreement on Safeguards and the GATT 1994. Consultations were held on January 26, 2001, and informal consultations continued thereafter. A panel was established at the EU's request on September 10, 2001, but it has not yet been composed.

United States—Continued Dumping and Subsidy Offset Act of 2000 ("Byrd Amendment")

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 USC 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel is composed of: Mr. Luzius Wasescha, Chair (selected by mutual agreement of the parties); and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members (selected by the Director-General).

United States—Countervailing duties on certain carbon steel products from Brazil

On December 21, 2000, Brazil requested consultations with the United States regarding U.S. countervailing duties on certain carbon steel products from Brazil, alleging that the Department of Commerce's "change in ownership" (or "privatization") methodology, which was ruled inconsistent with the WTO Subsidies Agreement when applied to leaded steel products from the UK, violates the Subsidies Agreement in this situation as well. Consultations were held on January 17, 2001.

United States—Section 129(c)(1), Uruguay Round Agreements Act (URAA)

On January 17, 2001, Canada requested consultations with the United States regarding Section 129(c)(1) of the URAA, and the accompanying Statement of Administrative Action (SAA) at page 1026 of the SAA, alleging that this provision precludes the United States from complying fully with rulings of the WTO Dispute Settlement Body in cases where the United States has acted inconsistently with its WTO obligations with respect to an antidumping or countervailing duty proceeding. Consultations were held on March 1, 2001, and a panel was established at Canada's request on August 23, 2001. The following three panelists were selected by mutual agreement of the parties: Mrs. Claudia Orozco, Chair; and Mr. Edmund McGovern and Mr. Simon Farbenbloom, Members.

United States—Antidumping duties on seamless pipe from Italy

On February 5, 2001, the EU requested consultations with the United States regarding antidumping duties imposed by the United States on seamless line and pressure pipe from Italy, complaining about the final results of a "sunset" review of that antidumping order, as well as the procedures followed by the Department of Commerce generally for initiating "sunset" reviews pursuant to Section 751 of the Tariff Act of 1930 and 19 CFR §351. The EU alleges that these measures violate the WTO Antidumping Agreement. Consultations were held on March 21, 2001.

United States—Preliminary Determinations with Respect to Certain Softwood Lumber from Canada

"On August 21, 2001, Canada requested consultations with the United States regarding the U.S. Department of Commerce's preliminary countervailing duty and critical circumstances determinations concerning certain softwood lumber from Canada, as well as section 777A(e)(2)(A) and (B) of the Tariff Act of 1930 (19 U.S.C. 1677f-1(e)(2)(A) and (B)). Canada alleges that these determinations and statutory provisions are inconsistent with the WTO Agreement, GATT 1994, and the Agreement on Subsidies and Countervailing Measures. Consultations were held on September 17, 2001, and a panel was established at Canada's request on December 5, 2001. The panel is composed of Mr. Dariusz Rosati, Chair, and Mr. Gonzalo Biggs, Member (selected by the Director-General); and Mr. Robert Arnott, Member (selected by mutual agreement of the parties)."

United States—Calculation of Dumping Margins

On September 18, 2001, the United States received from Brazil a request for consultations regarding the *de minimis* standard as applied by the U.S. Department of Commerce in conducting reviews of antidumping orders, and the practice of "zeroing" (or, not offsetting "dumped" sales with "non-dumped" sales) in conducting investigations and reviews. Brazil submitted a revised request on November 1, 2001, focusing specifically on the antidumping duty order on silicon metal from Brazil. Consultations were held on December 7, 2001.

IMPLEMENTATION OF WTO AGREEMENTS

A. General Council Activities

Status

The WTO General Council is the highest decision-making body in the WTO that meets on a regular basis during the year. It exercises all of the authority of the Ministerial Conference, which is required to meet once every two years; the Fourth Ministerial Conference met most recently in Doha, Qatar. The General Council and Ministerial Conference consist of representatives of all WTO Members. Only the Ministerial Conference and the General Council have the authority to adopt authoritative interpretations of the WTO Agreements, submit

amendments to the Agreements for consideration by Members, and grant waivers of obligations. All accessions to the WTO must be approved by the General Council or the Ministerial Conference.

Technically, meetings of both the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB) are meetings of the General Council convened for the purpose of discharging the responsibilities of the DSB and TPRB respectively.

Three major bodies report directly to the General Council: the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights. The Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, the Committee on Budget, Finance and Administration, and the Committee on Regional Trading Arrangements report directly to the General Council. The Working Groups established at the First Ministerial Conference in Singapore to examine investment, trade and competition policy, and transparency in government procurement also report directly to the General Council. A number of subsidiary bodies report through the Council for Trade in Goods or the Council for Trade in Services to the General Council.

The General Council uses both formal and informal processes to conduct the business of the WTO. In addition, informal groupings, which generally include the United States, can play an important role in consensus-building. In 2001, special sessions of the General Council were convened to address matters concerning implementation of WTO Agreements.

Prior to establishment of the WTO in 1995, annual meetings of GATT Contracting Parties were convened with representatives from capitals generally at the subcabinet level, and only held at the ministerial level to launch or conclude negotiations. Part of the logic behind this change from the GATT was the fact that with creation of the WTO, Members had created a permanent negotiating forum to achieve trade liberalization. The Financial Services Agreement, the Basic Telecommunications Services Agreement, Information Technology Agreement, and the built-in agenda negotiations underway are examples of how the WTO has evolved into a permanent negotiating body.

Major Issues in 2001

Ambassador Stuart Harbinson of Hong Kong, China served as Chairman of the General Council in 2001. In addition to focusing on preparations for the Fourth Ministerial Conference in Doha, the General Council had oversight over the progress of the built-in negotiations on agriculture and services. The following additional issues figured prominently in the General Council activities:

Transparency: In 2001, the General Council continued its efforts to enhance the level of transparency in WTO business among Members and with the public. In particular, the General Council considered the expansion of its 1996 document availability decision, a step which is supported by several Members, including the United States. The United States and other Members urged the timely circulation and de-restriction of documents. Opposing WTO Members believe such measures would adversely affect the Member-driven nature of the organization. Apart from document-based transparency, Members also considered the WTO's relations with the public. Several entities were granted observer status at Doha as a result of these discussions.

Waivers of Obligations: As part of the annual review required by Article IX of the WTO Agreement, the General Council considered reports on the operation of a number of previously agreed waivers, including those applicable to the United States for the Caribbean Basin Economic Recovery Act, the Andean Trade Preferences Act, and preferences for the Former Trust Territories of the Pacific Islands.

The General Council also approved several other waivers, as described in the section on the Council on Trade in Goods (CTG). Annex II contains a detailed list of Article IX waivers currently in force.

Accessions: The General Council, acting on behalf of the Ministerial Council, approves the accessions of new Members to the WTO after the final terms have been adopted by the Working Parties established by the Council. In 2001, the Ministerial Council at Doha approved the accession of China and Taiwan. China became a Member of the WTO on December 11, 2001 and Taiwan on January 1, 2002. The General Council approved the accessions of Lithuania which joined on May 31, 2001 and Moldova which joined on July 26, 2001. Additional details concerning these accessions are discussed below in the section entitled "Accessions to the World Trade Organization."

Global Electronic Commerce: During 2001, the General Council continued to examine issues related to electronic commerce. Emerging from those discussions was a list of cross-cutting issues, *i.e.,* issues that touch upon activities of two or more of the WTO bodies examining electronic commerce under the Work Programme on Global Electronic Commerce. The General Council attempted to address the cross-cutting issues by organizing a dedicated discussion on electronic commerce in June 2001. In addition, the Doha Ministerial Declaration included important language on electronic commerce, particularly extending the current practice of not imposing customs duties on electronic transmissions until the Fifth Ministerial Conference. Ministers also instructed the General Council to consider the most appropriate institutional arrangements for handling the work program, and to report on further progress to the Fifth Ministerial Conference.

Capacity Building through Technical Cooperation: The General Council continued its supervision of technical assistance for the purpose of capacity building in developing countries (*i.e.*, modernizing their government operations to facilitate effective implementation of the WTO Agreements). For its part, the United States donated one million dollars to the WTO Global Trust Fund for Technical Assistance to provide training courses for African countries and to develop computer training modules for in-country training.

Prospects for 2002

The General Council will continue its important role in overseeing implementation of the WTO Agreements, expanding the current program of work for the WTO, and overseeing the new negotiations launched at the Fourth Ministerial Conference at Doha last year. Management of the WTO, especially with respect to outreach efforts with the public, consultations with Members and its work with other institutions on capacity building, will figure prominently in the Council discussions over the next year. The Council likely will meet at least quarterly to discharge its functions and likely will undertake a review of a U.S. waiver of legislation know as the “Jones” Act.

The requirement for ministerial meetings was established in the Uruguay Round to assure regular, political level review by ministers of the operation of the WTO, similar to the practice of other international organizations. Ministerial Conferences were convened in Singapore (1996), Geneva (1998), Seattle (1999) and Doha (2001). The General Council has the authority to add issues to the WTO’s agenda, whether for a work program or negotiations. The informal processes on transparency and oversight of the work program on electronic commerce will remain an important part of the Council’s work.

B. Council for Trade in Goods

Status

The WTO Council for Trade in Goods (CTG) oversees the activities of 12 committees (Agriculture, Antidumping Practices, Customs Valuation, Import Licensing Procedures,

Information Technology, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade and Trade-related Investment Measures (TRIMS)) in addition to the Textiles Monitoring Body (TMB), and the Working Party on State Trading.

Major Issues in 2001

In 2001, the CTG held 11 formal meetings. As the central oversight body in the WTO for all agreements related to trade in goods, the CTG primarily devoted its attention to providing formal approval of decisions and recommendations proposed by its subsidiary bodies. The CTG also served as a forum for airing initial complaints regarding actions taken by individual Members with respect to the operation of agreements. Many of these complaints were resolved through consultation. In addition, three major issues were extensively debated in the CTG in 2001:

Request for TRIMS Extensions: Article 5 of the WTO Agreement on Trade-Related Investment Measures (TRIMS) required developing countries to eliminate certain measures by January 1, 2000. However, the CTG can extend the transition period for the elimination of inconsistent measures for countries that demonstrate particular difficulties implementing the Agreement. Extensions up to December 31, 2003, were provided to Argentina, Chile, Colombia, Mexico, Malaysia, Pakistan, the Philippines, Romania and Thailand.

Waivers: The CTG approved several requests for waivers, including those related to the implementation of the Harmonized System and renegotiation of tariff schedules, waivers for trade preferences granted by Switzerland to Albania and Bosnia-Herzegovina, waivers with regard to the implementation of the Agreement on Customs Valuation to Cameroon, Haiti, Madagascar, Pakistan, Cote d'Ivoire and El Salvador, and extension of Cuba's waiver on exchange rates. In April 2000, the EU requested a waiver for the interim trade provisions of its new African-Caribbean-Pacific "partnership" agreements, which replaced the preferences of the Lomé Convention. At the Doha Ministerial Meeting, WTO Members adopted waivers that reflected the arrangement worked out between the EU and interested Members. A list of waivers currently in force can be found in Annex II.

Review of the Agreement on Textiles and Clothing (ATC): The CTG met three times during the fall of 2001 to conduct the major review of the implementation of the ATC in the second stage (1998-2001) of the integration process pursuant to Article 8.11 of the Agreement. These discussions revealed a major disagreement between textile exporters (typically developing countries) and importers (mostly developed countries). The developing countries assert that the spirit of the ATC requires faster liberalization by importers. Exporters point out, for example, that almost all textile products subject to quota restraint in 1995 will still be subject to quotas to the end of the ATC in 2004. Importers reply that they have fulfilled the requirements of the ATC in precisely the manner foreseen by the drafters of the Agreement. With respect to the issue of quotas remaining in force until 2004, importers maintain that the Agreement provides for faster growth rates compared to the situation existing before the entry into force of the ATC. These faster growth rates have resulted in a substantial increase in developing-country textile exports since 1995. The differences between exporting and importing countries in 2001 prevented the CTG from issuing a report of the review, including conclusions and recommendations. Discussions on the content of this report will continue in 2002. In addition, the Committee decided on the members/alternates of the TMB for Stage 3 implementation of the Agreement. The TMB will be composed of: the United States, China, the EU, Japan, Canada/Norway, Switzerland/Turkey, Brazil, Thailand, Pakistan/Macau, India/Egypt, and Hong Kong/Republic of Korea. Upon accession to the WTO, China assumed membership on the TMB.

(The membership of the TMB for Stage 3 is the same as Stage 2 with the addition of China.)

Prospects for 2002

The CTG will continue to be the focal point for discussing agreements in the WTO dealing with trade in goods. One issue that Members may continue to consider is whether to reorganize the Councils in a way that eliminates the CTG, allowing the General Council to assume direct oversight responsibilities. Outstanding waiver requests will also be further examined.

1. Committee on Agriculture

Status

The WTO Committee on Agriculture oversees the implementation of the Agreement on Agriculture and provides a forum for WTO Members to consult on matters related to provisions of the Agreement. In many cases, the Committee resolves problems without needing to refer them to WTO dispute settlement. The Committee also has responsibility for monitoring the parties to the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net Food-Importing Developing Countries.

Major Issues in 2001

The Committee held four formal meetings in March, June, September and December to address ongoing issues related to the implementation of the Agreement on Agriculture. The Committee also met in special session to begin negotiations on continuing the reform process in agriculture.

During its meetings, the Committee reviewed progress on the implementation of commitments negotiated in the Uruguay Round. This review was undertaken on the basis of notifications by Members in the areas of market access, domestic support, export subsidies, export prohibitions and restrictions, and general matters relevant to the implementation of commitments.

Over 270 notifications were subject to review during 2001. The United States actively participated in the notification process to raise specific issues concerning the operation of Members' agricultural policies. For example, the United States raised questions concerning elements of domestic support programs used by the European Union, Canada, and Japan; identified restrictive import licensing and tariff-rate quota administration practices used by Costa Rica, Indonesia, the Philippines, Thailand, and Poland; and questioned Turkey's notification on wheat export subsidies. The Committee also proved to be an effective forum for raising issues relevant to the implementation of Member's other commitments. For example, the United States identified concerns with Venezuela's import restrictions on corn, India's wheat and rice export policy, Costa Rica's ban on imports of U.S. poultry parts, and French subsidies to soybean farmers.

On a number of occasions, U.S. intervention in the Committee led to corrective action by the countries concerned. For example, Indonesia's commitment to remove its ban on U.S. poultry parts was facilitated through the Committee, and repeated U.S. questioning of Turkey's wheat export subsidies led to a reduction in Turkey's support price for wheat, thus reducing the need for Turkey to use export subsidies.

The Committee also discussed a number of implementation issues, including: (1) the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programs pursuant to Article 10.2 of the Agreement on Agriculture, taking into account the effect of such disciplines on net food-importing countries; (2) improving the effectiveness of the implementation of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-Importing Developing Countries; and (3) enhancing

Members' notifications on tariff-rate quotas (TRQs) in accordance with the General Council's decision regarding the administration of TRQ regimes in a transparent, equitable, and non-discriminatory manner. At its September meeting, the Committee approved recommendations concerning these implementation issues, which were reported to the General Council.

Prospects for 2002

The United States will continue to make full use of Committee meetings to ensure timely notification, transparency and enforcement of Uruguay Round commitments as they relate to export subsidies, market access, domestic support or any other trade-distorting practices by WTO Members. In addition, the Committee will continue to monitor and analyze the impact of the possible negative effects of the reform process on least-developed and net food-importing developing countries as indicated in the Agreement on Agriculture.

2. Committee on Antidumping Practices

Status

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement) sets forth detailed rules and disciplines prescribing the manner and basis on which Members may take action to offset the injurious dumping of products imported from another Member. Implementation of the Agreement is overseen by the Committee on Antidumping Practices, which operates in conjunction with two subsidiary bodies, the Working Group on Implementation (formerly the Ad Hoc Group on Implementation, but renamed at the October 2001 meeting) and the Informal Group on Anticircumvention.

The Working Group is an active body which focuses on practical issues and concerns relating to implementation. Based on papers submitted by Members on specific topics for discussion, the activities of the Working Group permit Members to develop a better understanding of the similarities and differences in their policies and practices for implementing the terms of the Agreement. Where possible, the Working Group endeavors to develop draft recommendations on the topics it discusses, which it forwards to the Antidumping Committee for consideration. To date, the Committee has adopted three Working Group recommendations on: (1) pre-initiation notifications under Article 5.5 of the Agreement; (2) the periods used for data collection in investigations of dumped imports and of injury caused or threatened to be caused by such imports; and, in April 2001, (3) extensions of time to supply information. While the Committee considered at its April and October 2001 meetings a draft decision regarding the status to be accorded such adopted recommendations, the Committee was unable to reach a consensus on the text of the decision, and will consider the issue again at its April 2002 meeting.

At Marrakesh in 1994, Ministers adopted a Decision on Anticircumvention directing the Antidumping Committee to develop rules to address the problem of circumvention of antidumping measures. In 1997, the Antidumping Committee agreed upon a framework for discussing this important topic and established the Informal Group on Anticircumvention. Under this framework, the Informal Group held meetings in April and October 2001 to discuss the topics of "what constitutes circumvention" and "what is being done by Members confronted with what they consider to be circumvention."

The Ministerial Decision on Implementation-Related Issues and Concerns in November 2001 referred three issues to the Committee and its Working Group to examine and prepare appropriate recommendations within twelve months on: (1) examination and clarification of the modalities of application of Article 15 of the Antidumping Agreement pertaining to developing-country Members; (2) study of the time-frame to be used in calculating the volume

of dumped imports for making the determination under Article 5.8 of the Antidumping Agreement as to whether the volume of such imports is negligible; and (3) preparation of guidelines for the improvement of annual reviews under Article 18.6 of the Antidumping Agreement.

Major Issues in 2001

The Antidumping Committee's work remains an important venue for reviewing Members' compliance with the detailed provisions in the Antidumping Agreement, improving mutual understanding of those provisions, and providing opportunities to exchange views and experience with respect to Members' application of antidumping remedies.

In 2001, the Antidumping Committee held two regular meetings, in April and October, as did the Working Group on Implementation and the Informal Group on Anticircumvention. The Antidumping Committee also held one special meeting in December. At its regular meetings, the Antidumping Committee focused on implementation of the Antidumping Agreement, in particular, by continuing its review of Members' antidumping legislation. The Committee also reviewed the reports that the Agreement requires Members to provide of their preliminary and final antidumping measures and actions taken in each case over the preceding six months. At the special meeting in December, the Committee added to its (and the Working Group's) agenda the three topics referred to it in November 2001 by the Ministerial Decision on Implementation-Related Issues and Concerns.

Among the more significant activities undertaken in 2001 by the Antidumping Committee, the Working Group on Implementation and the Informal Group on Anticircumvention are the following:

Notification and Review of Antidumping Legislation: To date, 65 Members of the WTO have notified that they currently have antidumping legislation in place, while 32 Members have notified that they maintain no such legislation. In 2001, the Antidumping Committee reviewed notifications of new or amended antidumping legislation submitted by Canada, Croatia, Ecuador, the European Union, Korea, Latvia, Mexico, Morocco, Peru, and Tunisia. In addition, the Committee continued its review (for the most part via a written question and answer procedure) of the previously notified legislation of Chile and Malaysia. Members, including the United States, were active in formulating written questions and in making follow-up inquiries at Committee meetings.

Notification and Review of Antidumping Actions: In 2001, 25 WTO Members notified antidumping actions taken during the latter half of 2000, whereas 24 Members did so for the first half of 2001. (By comparison, 40 Members notified that they had not taken any antidumping actions during the latter half of 2000, while 29 Members notified that they had taken no actions in the first half of 2001.) These actions, in addition to outstanding antidumping measures currently maintained by WTO Members, were identified in semi-annual reports submitted for the Antidumping Committee's review and discussion.

Working Group on Implementation: The Working Group held two rounds of multi-day working meetings in April and October 2001. At these sessions, the Group continued its review and discussion of six topics approved by the Antidumping Committee in 1999, *i.e.*, (i) practical issues and experience in applying Article 2.4.2 of the Agreement; (ii) termination of investigations under Article 5.8 in cases of *de minimis* import volume; (iii) practical issues and experience in cases involving cumulation under Article 3.3; (iv) practical issues and experience with respect to questionnaires and requests for information under Article 6.1 and 6.1.1; (v) practical issues and experience in providing opportunities for industrial users and consumer organizations to provide information under Article 6.1.2; and (vi) practical issues and experience in conducting "new shipper" reviews

under Article 9.5. In addition, the Group considered three draft recommendations, on extensions of time to supply information, on the contents of preliminary affirmative determinations, and on conditions of competition relevant to cumulation under Article 3.3. The Group reached a consensus in April on the recommendation concerning extensions of time to supply information, which was adopted by the Committee in April. The Group also reached a consensus in October on the recommendation concerning the contents of preliminary affirmative determinations, but that recommendation was tabled by the Committee, given the lack of agreement within the Committee on the draft decision regarding the status of adopted recommendations. No agreement has yet been reached by the Group on the draft recommendation concerning cumulation under Article 3.3, but it was agreed to continue work on this topic in the next year.

The Working Group continues to serve as an active venue for work regarding the practical implementation of WTO antidumping provisions. It offers important opportunities for Members to examine issues and candidly exchange views and information across a broad range of topics. It has drawn a high level of participation by Members and, in particular, by capital-based experts and officials of antidumping administering authorities, many of whom are eager to obtain insight and information from their peers. Since the inception of the Working Group, the United States has submitted papers on most topics, and has been an active participant at all meetings. Implementation concerns and questions stemming from both one's own administrative experience and from observing the practices of others are equally addressed. While not a negotiating forum in either a technical or formal sense, the Working Group serves a vitally important role in promoting improved understanding of the Agreement's provisions and exploring options for "best practices" among antidumping administrators.

Informal Group on Anticircumvention: The Antidumping Committee's establishment of the Informal Group on Anticircumvention in 1997 marked an important step towards fulfilling the Decision of Ministers at Marrakesh to refer this matter to the Committee. At its two meetings in 2001, the Informal Group on Anticircumvention continued its useful discussions on the subject of "what constitutes circumvention?" and, at the same time, proceeded to consider the second item in the agreed framework concerning "what is being done by Members confronted with what they consider to be circumvention?" With respect to the latter item, Members submitted papers outlining scenarios based on factual situations faced by their investigating authorities, and exchanged views on how their respective authorities might respond to such situations. Moreover, those Members, such as the United States, which have legislation intended to address circumvention, responded to inquiries from other Members as to how such legislation operates and the manner in which certain issues may be treated. At the October 2001 meeting, the Member agreed to open discussions on the third topic of the agreed framework: "to what extent can circumvention be dealt with under the relevant WTO rules? To what extent can it not? And what other options may be deemed necessary?"

Prospects for 2002

In 2002, the Antidumping Committee will address the three issues that were referred to it by the Ministerial Decision on Implementation-Related Issues and Concerns. The Committee is instructed by the Ministerial Decision to study each of these issues through the Working Group on Implementation, and to prepare appropriate recommendations within twelve months. Given the importance of completing this work within the time frame specified in the Decision, the Committee decided at the December 2001 special meeting not to add other new topics for consideration by the Working Group.

Work in 2002 will also proceed in all of the areas that the Antidumping Committee, the

Working Group on Implementation and the Informal Group on Anticircumvention addressed this past year. The Antidumping Committee will pursue its review of Members' notifications of antidumping legislation, and Members will continue to have the opportunity to submit additional questions concerning previously reviewed notifications. This ongoing review process in the Committee is important to ensuring that antidumping laws around the world are properly drafted and implemented, thereby contributing to a well-functioning, liberal trading system. As notifications of antidumping legislation are not restricted documents, U.S. exporters will continue to enjoy access to information about the antidumping laws of other countries that should assist them in better understanding the operation of such laws and in taking them into account in commercial planning.

The preparation by Members and review in the Committee of semi-annual reports and reports of preliminary and final antidumping actions will also continue in 2002. The 1996 decision of the WTO General Council to liberalize the rules on the restriction of WTO documents has resulted in these reports also becoming accessible to the general public, in keeping with the objectives of the Uruguay Round Agreements Act. (Information on accessing WTO notifications is included in Annex II.) This has been an important development in promoting improved public knowledge and appreciation of the trends in and focus of all WTO Members' antidumping actions.

The discussions in the Working Group on Implementation may play an increasingly important role as more and more Members enact laws and begin to apply them. As noted, the Ministerial Decision on Implementation-Related Issues and Concerns specifically calls for the Committee to examine the three issues referred to it through the Working Group. Moreover, there has been a sharp and widespread interest in clarifying understanding of the many complex provisions of the Antidumping Agreement. Tackling these issues in a serious manner will require the involvement of the Working Group, as that is the setting best suited to provide the kind and degree of technical and administrative insight needed to shed light on important nuances and to offer practical alternatives for solving problems. Indeed, it is only in the Antidumping Committee and the Working Group that Members can devote the considerable time and resources needed to conduct a responsible examination of these questions. For these reasons, the United States will continue to rely upon the Working Group to learn in greater detail about other Members' administration of their antidumping laws, especially as that forum provides opportunities to discuss not only the laws, as written, but also the operational practices which Members employ to implement them. Therefore, as Members continue to submit papers on the topics being considered and participate actively in the discussions, the Group's utility should continue to grow.

The work of the Informal Group on Anticircumvention will also continue in 2002, according to the framework for discussion on which Members agreed. Many Members, including the United States, recognize the importance of using the Informal Group to pursue the 1994 decision of Ministers at Marrakesh, who expressed the desirability of achieving uniform rules in this area as soon as possible. The agreement at the October 2001 meeting to address in 2002 the added topic of "to what extent circumvention can be dealt with under existing WTO rules, and what other options may be deemed necessary," will permit the work of the Informal Group to move forward on an issue of obvious importance.

3. Committee on Customs Valuation

Status

The purpose of the WTO Agreement on the Implementation of GATT Article VII (also known as the "WTO Agreement on Customs Valuation") is to ensure that determinations of the customs value for the application of duty

rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement is an important issue for U.S. exporters, particularly to ensure that market access opportunities provided through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied.

Major Issues in 2001

The Agreement is administered by the WTO Committee on Customs Valuation, which met formally six times in 2001. The Agreement established a Technical Committee on Customs Valuation under the auspices of the World Customs Organization (WCO). In accordance with a 1999 recommendation of the WTO Working Party on Preshipment Inspection which was adopted by the General Council, the Committee on Customs Valuation also continued to provide a forum for reviewing the operation of various Members' preshipment inspection regimes and the implementation of the WTO Agreement on Preshipment Inspection.

Experience continues to demonstrate that the implementation of the Agreement often represents the first concrete and meaningful step taken by developing countries toward reforming their customs regimes, and ultimately moving to a rules-based border environment for conducting trade transactions. Because the Agreement precludes the use of arbitrary customs valuation methodologies, an additional positive result is to diminish the genesis of much corruption by customs officials. For all of these reasons, as part of an overall strategic approach to trade facilitation, the United States has taken an aggressive leadership role at the WTO on matters related to customs valuation.

U.S. exporters across all sectors – including agriculture, automotive, textile, steel, and information technology products – have experienced difficulties related to the conduct of customs valuation regimes outside of the disciplines set forth under the WTO Agreement on Customs Valuation. The use of arbitrary and inappropriate "uplifts" in the valuation of goods by importing countries when applying tariffs can result in an unwarranted doubling or tripling of duties. U.S. exporters to many developing countries have had market access gains undermined through the application of arbitrarily-established minimum import prices, often used as a crude, broad-brush type of trade remedy–-one that provides no measure of administrative transparency or procedural fairness. It is notable that such a use of minimum import prices, a practice inconsistent with the operation of the Agreement on Customs Valuation, is diminishing as more developing countries undertake full implementation of the Agreement.

Achieving universal adherence to the WTO Agreement on Customs Valuation has been a longstanding and important objective of the United States, dating back more than twenty years. The Agreement was initially negotiated in the Tokyo Round, but its acceptance was voluntary as a "code," until mandated as part of membership in the WTO. Under the Uruguay Round Agreement, special transitional measures were provided for developing-country Members, allowing for delayed implementation of the Agreement on Customs Valuation and resulting in individual implementation deadlines for such Members beginning in 2000 and continuing through 2001.

While many developing-country Members undertook timely implementation of the Agreement, the Committee continued throughout 2001 to address various individual Member requests for either a transitional reservation for implementation methodology, or for a further extension of time for overall implementation. Working with key trading partners, the United States led consultations on each request, which resulted in the development of a detailed decision tailored to the situation of the requesting Member. Each decision has included an individualized benchmarked work

program toward full implementation, along with requirements to report on progress and specific commitments on other implementation issues important to U.S. export interests.

The Committee's work throughout 2001 demonstrated a cooperative focus among all Members toward practical methods to address the specific problems of individual Members. As part of its problem-solving approach, the Committee continued to take an active role in exploring how best to ensure effective technical assistance, including with regard to meeting post-implementation needs of developing-country Members. In July 2001, the Committee formally adopted a work program designed to invigorate its efforts in this area, aiming to address practical matters such as working to enhance coordination and cooperation among donors of assistance related to customs valuation, and exploring potential linkage between such technical assistance and the individual implementation work programs elaborated by various developing-country Members.

Prospects for 2002

The Committee's work in 2002 will include a review of the relevant implementing legislation and regulations submitted by newly-implementing Members, along with addressing any further requests by other Members concerning implementation deadlines. The Committee will monitor progress by Members with regard to their respective work programs that were included in the decisions granting transitional reservations or extensions of time. The Committee also will continue to provide a forum for sustained focus on issues arising from practices of all Members that have implemented the Agreement, to ensure that such Members' customs valuation regimes do not utilize arbitrary or fictitious values, such as through the use of minimum import prices. Finally, the Committee will continue to address technical assistance issues as a matter of high priority, consistent with the Committee's work program launched in mid-2001.

4. Committee on Import Licensing

Status

The Agreement on Import Licensing Procedures establishes rules for all WTO Members that use import licensing systems to regulate their trade. Its aim is to ensure that the procedures used by Members in operating their import licensing systems do not, in themselves, form barriers to trade. The Agreement also operates to increase the transparency and predictability of such regimes and to create disciplines to protect the importer against unreasonable requirements or delays associated with the licensing regime. While the Agreement's provisions do not directly address the WTO consistency of the underlying measures that licensing systems regulate, they establish the base line of what constitutes a fair and non-discriminatory application of the procedures. The Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems where certain conditions must be met before a license is issued. Governments often use non-automatic licensing to administer import restrictions, for quotas and tariff-rate quotas or to administer safety or other requirements (*e.g.*, for hazardous goods, armaments, antiquities, etc.). Requirements for permission to import that act like import licenses, such as certification of standards and sanitary and technical regulations, are also subject to the rules of the Agreement.

The Committee on Import Licensing was established to administer the Agreement and monitor compliance with the mutually agreed rules for the application of these widely used measures. It accomplishes this by reviewing initial or follow-up information on import licensing requirements that WTO Members are required to submit on a regular basis. The Committee meets twice a year to review these submissions, to receive questions from Members on the licensing regimes described, and to address specific observations and complaints concerning Members' licensing systems. While

not a substitute for dispute settlement procedures, these consultations on specific issues allow Members to clarify problems and resolve possible potential problems before they become disputes. As use of import licensing increases, *e.g.*, to enforce national security, environmental, and technical requirements, to administer tariff-rate quotas (TRQs), or to manage safeguard measures, utilization of the Committee as a forum for discussion and review will increase.

Major Issues in 2001

At its meetings in April and October 2001, the Committee reviewed initial or revised notifications or completed questionnaires on licensing procedures for 49 WTO Members (including EU Member States), or about the same number as in 2000. The United States submitted written questions on a number of the notifications in order to clarify the nature of the procedures and to verify that the legislation notified met the procedural requirements of the Agreement. A number of these questions focused on the use of licensing and other forms of prior authorization requirements to administer the application of technical regulations and sanitary and phytosanitary requirements on imports. The United States also sought information from Members that use licensing to operate their TRQs on agricultural tariff lines. The Committee spent considerable time discussing how the number and frequency of notifications by Members could be increased. At the end of 2001, only 87 of 142 Members were notifying information as required by the Agreement. The Committee supported suggestions that the Chairman send a follow-up letter reminding Members of their obligations and that the status of Agreement notifications be included in the information developed for Trade Policy Reviews.

Prospects for 2002

Consideration of licensing in the administration of agricultural tariff-rate quotas will intensify, as the new negotiations launched at Doha proceed, including possible improvements in the Agreement necessary to improve operation of these mechanisms. The Committee will continue discussions to encourage enhanced compliance with the notification and other transparency requirements of the Agreement. The Committee also will continue to be the first point of contact in the WTO for Members with complaints or questions on the licensing regimes of other Members, and additional attention will be given to encouraging timely responses by Committee Members to questions submitted on the notified information.

5. Committee on Market Access

Status

WTO Members established the Committee on Market Access in January 1995, consolidating the work of the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures from the GATT 1947. The Committee on Market Access supervises the implementation of concessions on tariffs and non-tariff measures (where not explicitly covered by another WTO body, *e.g.*, the Textiles Monitoring Body (TMB)). The Committee also is responsible for future negotiations and verification of new concessions on market access in the goods area. The Committee reports to the Council on Trade in Goods.

Major Issues in 2001

During 2001, WTO Members continued implementing the ambitious package of tariff cuts agreed in the Uruguay Round with the Committee having responsibility for verifying that implementation is proceeding on schedule. The Committee held three formal and eleven informal meetings in 2001 to discuss: the ongoing review of WTO tariff schedules to accommodate updates to the Harmonized System (HS) tariff nomenclature; the WTO Integrated Data Base; finalizing consolidated schedules of WTO tariff concessions in current

HS nomenclature; and implementation issues related to quota allocations. The Committee also hosted a technical assistance seminar on tariff data and negotiations.

Updates to the Harmonized System (HS) nomenclature: In 1993, the Customs Cooperation Council (now known as the World Customs Organization, or WCO) agreed to approximately 400 sets of amendments to the HS, which were to enter into effect on January 1, 1996. These amendments result in changes to the WTO schedules of tariff bindings. Using agreed examination procedures, Members have the right to object to any proposed nomenclature change affecting bound tariff items on grounds that the new nomenclature (as well as any increase in tariff levels for an item above existing bindings) represents a modification of the tariff concession and can pursue unresolved objections under GATT 1994 Article XXVIII.

Since 1996, successive waivers have been granted by decisions of the General Council until the implementation procedures can be finalized. The majority of WTO Members have completed the process, but 19 Members continue to require waivers. The current waiver expires on April 30, 2002, at which time objections related to the adoption of HS96 are expected to be resolved. The Committee also examined issues related to the transposition and renegotiation of the schedules of certain Members which had adopted the HS in the years following its introduction on January 1, 1988.

The Committee also began to discuss the next set of WCO amendments, which are scheduled to take effect on January 1, 2002 (HS2002). Drawing from the experience of HS96, the Committee, working with the Secretariat, agreed to electronic procedures that will facilitate and expedite the process of reviewing and approving the 373 proposed amendments under HS2002. The United States submitted its proposed changes to the Secretariat in December 2001.

Integrated Data Base (IDB): The Committee addressed issues concerning the IDB, which is to be updated annually with information on the tariffs, trade data and non-tariff measures maintained by WTO Members. Members are required to provide this information as a result of a General Council Decision, adopted in July 1997. The U.S. objectives are to achieve full participation in the IDB by all WTO Members and, ultimately, to develop a method to make the trade and tariff information publicly available. In recent years, the United States has taken an active role in pressing for a more relevant database structure with the aim of improving the trade and tariff data supplied by WTO Members.

During 2001, the Committee held several informal meetings focused on improving IDB participation and identifying technical assistance needs. With the Committee's guidance, the Secretariat held four regional seminars to explore ways of improving participation, including through cooperation with regional trade organizations that maintain similar databases (*e.g.*, the FTAA and APEC Secretariats). As a result, participation has continued to improve. As of September 2001, Seventy-four Members and four acceding countries had provided IDB submissions.

Consolidated schedule of tariff concessions (CTS): The Committee continued its work to create a PC-compatible structure for tariff and trade data. The CTS will facilitate the Committee's ongoing work to provide electronically each Member's consolidated "loose-leaf" schedule of tariff concessions. This highly technical task is essential in order to generate an up-to-date schedule in current tariff nomenclature. The electronic CTS will include: tariff bindings for each WTO Member that reflects Uruguay Round tariff concessions; HS96 updates to tariff nomenclature and bindings; and, any other modifications to the WTO schedule (*e.g.*, participation in the Information Technology Agreement). The Committee reviewed the work of the Secretariat, which through a technical assistance project has finalized the preparation of loose-leaf schedules for developing countries. Other countries that

chose to develop their own schedules have submitted them to the Secretariat.

Members are also finalizing the submission of agricultural support tables, based on an agreed electronic format. This information is being integrated into Members' consolidated schedules. The Secretariat also completed tables for 32 developing countries with agricultural commitments, while developed countries are finalizing their own tables. The entire consolidated schedule, including the agricultural commitments, is targeted for dissemination among Members in 2002. The CTS will be linked to the IDB and will serve as the vehicle for conducting agricultural and newly mandated non-agricultural market access negotiations in the WTO.

Technical Assistance: In March 2001, the Committee and the Secretariat conducted a seminar on tariff matters to provide an opportunity for developing-country Members in particular to refresh and deepen their knowledge of relevant GATT 1994 provisions relating to tariffs and tariff negotiations. The seminar touched upon various tariff projects in place and their uses. Members also learned about the ongoing work of the World Customs Organization, which significantly influences the work of the Committee.

Prospects for 2002

The Committee will play an integral role in the negotiations launched at Doha. The ongoing work program of the Committee, while highly technical, will ensure that all WTO Members' schedules are up-to-date and available in electronic spreadsheet format so that the negotiations on goods market access can be performed with greater efficiency. Much of the work program will be finalized and disseminated in 2002, while the Secretariat will develop a new software package to help developing countries, in particular, to analyze data and effectively participate in the market access negotiations. In that regard, the Committee will likely explore other technical assistance needs. At the same time, as a priority, the Committee will secure updated data on applied tariffs and trade through the IDB. While access to the IDB currently is restricted to Members, as a part of a broader effort to improve transparency in the WTO, the United States will work with Members to improve public access to this important commercial information.

In addition to finalizing the HS96 updates, the Committee will begin to review Members' amended schedules based on the HS2002 updates. The electronic verification process, which incorporates the CTS data, will facilitate the review process and help developing countries to generate their own HS2002 submissions.

6. Committee on Rules of Origin

Status

The objective of the WTO Agreement on Rules of Origin is to increase transparency, predictability, and consistency in both the preparation and application of rules of origin. The Agreement on Rules of Origin provides important disciplines for conducting preferential and non-preferential origin regimes, such as the obligation to provide binding origin rulings upon request to traders within 150 days of request. In addition to setting forth disciplines related to the administration of rules of origin, the Agreement provides for a work program leading to the multilateral harmonization of rules of origin used for non-preferential trade regimes. The harmonization work program is more complex than originally envisioned under the Agreement, which originally set for the work to be completed within three years after its commencement in July 1995. The work program continued throughout 2001.

The Agreement is administered by the WTO Committee on Rules of Origin, which met formally five times in 2001. The Committee has also served as a forum to exchange views on notifications by Members concerning their

national rules of origin, along with those relevant judicial decisions and administrative rulings of general application. The Agreement also established a Technical Committee on Rules of Origin in the World Customs Organization to assist in the harmonization work program.

As of the end of 2001, 77 WTO Members had made notifications concerning non-preferential rules of origin, of which 36 Members notified their non-preferential rules of origin and 41 Members notified that they did not have a non-preferential rules of origin regime. Eighty-one Members had made notifications concerning preferential rules of origin, of which 78 notified their preferential rules of origin and three notified that they did not have preferential rules of origin.

Major Issues in 2001

The WTO Committee on Rules of Origin continued to focus on the work program on the multilateral harmonization of non-preferential rules of origin. In addition to its five formal meetings, the Committee conducted numerous informal consultations and working party sessions related to the harmonization work program negotiations. The Committee work proceeded in accordance with a work program that had been developed at the beginning of 2001, setting out a schedule of meetings along with an agreed-upon sequence for much of the work to be undertaken on a sector-by-sector basis.

Throughout 2001, the Committee continued to make progress in reducing the number of issues that remained outstanding under the harmonization work program, and proceeding on a track toward achieving consensus on product-specific rules of origin for more than 5000 tariff lines. The work focused primarily on methodologies involving change in tariff classification, although, where appropriate, the work program has also given consideration to other possible requirements beyond a change of tariff classification methodology. While resolution of several hundred outstanding issues was achieved in 2001, many of the remaining issues are particularly significant due to their broad application and relation to the overall future implementation of the results of the work program consistent with the rights and obligations under other WTO agreements.

U.S. proposals for the WTO origin harmonization work program have been developed under the auspices of a Section 332 study being conducted by the U.S. International Trade Commission pursuant to a request by the U.S. Trade Representative. The proposals reflect input received from the private sector and ongoing consultations with the private sector as the negotiations have progressed from the technical stage to deliberations at the WTO Committee on Rules of Origin. Representatives from several U.S. Government agencies are actively involved in the WTO origin harmonization work, including the U.S. Customs Service, the U.S. Department of Commerce, and the U.S. Department of Agriculture.

Prospects for 2002

In accordance with a decision taken by the General Council's Special Session in December 2000, the Committee expedited its efforts toward completing the harmonization work program by the end of 2001, but did not reach this objective. At the conclusion of 2001, the General Council extended the work program to the end of 2002, specifically requesting that the Committee on Rules of Origin focus during the first half of the year on identifying policy issues arising under the harmonization work program that may require attention of the General Council. Further progress in the harmonization work program on its current track will remain contingent on achieving appropriate resolution of several important and complex issues concerning the overall structure and operation of the harmonized rules, as well as their future application consistent with the rights and obligations under other WTO agreements.

Virtually all issues and problems cited by U.S. exporters as arising under the origin regimes of U.S. trading partners arise from administrative practices that result in non-transparency, discrimination, and a lack of predictability. Attention will continue to be given to the implementation of the Agreement's important disciplines related to transparency, which are recognized elements of what are considered to be "best customs practices."

7. Committee on Safeguards

Status

The Committee on Safeguards was established to administer the WTO Agreement on Safeguards. The Agreement establishes rules for the application of safeguard measures as provided in Article XIX of GATT 1994. Effective safeguards rules are important to the viability and integrity of the multilateral trading system. The availability of a safeguards mechanism gives WTO Members the assurance that they can act quickly to help industries adjust to import surges, thus providing them with the flexibility they otherwise would not have to open their markets to international competition. At the same time, WTO safeguard rules ensure that such actions are of limited duration and are gradually less restrictive over time.

The Agreement on Safeguards incorporates into WTO rules many concepts embodied in U.S. safeguards law (*i.e.*, section 201 of the Trade Act of 1974, as amended). The Agreement requires all WTO Members to use transparent and objective procedures when taking emergency actions to prevent or remedy serious injury to a domestic industry caused by increased imports.

Among its key provisions, the Agreement:

- requires a transparent, public process for making injury determinations;
- sets out clearer definitions than GATT Article XIX of the criteria for injury determinations;
- requires safeguard measures to be steadily liberalized over their duration;
- establishes an eight year maximum duration for safeguard actions, and requires a review no later than the mid-term of any measure with a duration exceeding three years;
- allows safeguard actions to be taken for three years, without the requirement of compensation or the possibility of retaliation; and,
- prohibits so-called "grey area" measures, such as voluntary restraint agreements and orderly marketing agreements, which have been utilized by countries to avoid GATT disciplines and which adversely affect third-country markets. Measures of this type in existence when the Agreement entered into force were required to be phased out over four years.

Major Issues in 2001

During its two meetings in April and October 2001, the Committee continued its review of Members' laws, regulations and administrative procedures, based on notifications required by Article 12.6 of the Agreement. The Committee reviewed new or amended legislative texts from Croatia, the Czech Republic, Estonia, Japan, Jordan, Korea, the Philippines, Slovenia and Tunisia. As of October 2001, 46 Members had notified the Committee of their domestic safeguards legislation, and 46 other Members notified that they had no such specific legislation.

The Committee previously noted that all notified pre-existing measures covered by Articles 10 and 11 of the Agreement had been phased out by 1 January 2000. Nigeria notified, in 1998, that its import prohibitions on wheat flour, sorghum, millet, gypsum and kaolin were "pre-existing Article XIX measures." At the fall 2001 meeting, the Committee repeated its

request that Nigeria update the Committee on the status of these measures as soon as possible.

The Committee reviewed Article 12.1(a) notifications of the initiation of and reasons for an investigatory process relating to serious injury or threat thereof from: Argentina (peaches), Brazil (coconuts), Bulgaria (ammonium nitrate), Chile (lighters, mixed oils, synthetic socks, wheat, wheat flour, sugar and edible vegetable oils), the Czech Republic (footwear and isoglucose), Egypt (fluorescent lamps), Japan (tatami-omote, welsh onions and shiitake mushrooms), Jordan (chocolates and biscuits), Morocco (rubber), the Philippines (cement and ceramic tiles), Poland (nitrates of potassium), El Salvador (pig-meat, rice and fertilizers), the Slovak Republic (sugar), and the United States (steel and wire rod, a NAFTA surge investigation).

The Committee reviewed Article 12.1(b) notifications of a finding of serious injury or threat thereof caused by increased imports from: Argentina (motorcycles and peaches), Chile (liquid/powdered milk, wheat, wheat flour, sugar and edible vegetable oils), the Czech Republic (isoglucose), Egypt (fluorescent lamps and powdered milk), India (gamma ferric oxide/magnetic iron oxide, methylene chloride and phenol), Jordan (biscuits), Morocco (bananas), the Slovak Republic (sugar) and Venezuela (tires).

The Committee reviewed Article 12.1(c) notifications of a decision to apply or extend a safeguard measure from: Argentina (motorcycles and peaches), Chile (liquid/powdered milk, synthetic socks, wheat, wheat flour, sugar and edible vegetable oils), the Czech Republic (isoglucose), Egypt (fluorescent lamps and powdered milk), Jordan (biscuits), Morocco (bananas), the Slovak Republic (sugar) and United States (wheat gluten (consideration of extension)).

The Committee received notifications from Chile (mixed oils and synthetic socks), Colombia (taxis), the Czech Republic (footwear), El Salvador (pig-meat and rice), Jordan (chocolate), and the United States (extruded rubber thread) of the termination of a safeguard investigation with no safeguard measure imposed. The Committee also reviewed notifications from Korea on the results of the mid-term review of the safeguard measure on garlic, and from the United States on the results of the mid-term review of the safeguard measure on line pipe. The Committee also discussed two notifications regarding the proposed suspension of concessions and other obligations during the period under review: from Egypt and the European Union regarding the Egyptian measure on powdered milk, and from Poland regarding the Slovak measure on sugar.

The Committee reviewed Article 12.4 notifications of the application of a provisional safeguard measure from: Argentina (peaches), Bulgaria (ammonium nitrate), Chile (synthetic socks, mixed oils, wheat, wheat flour, sugar and edible vegetable oils), the Czech Republic (isoglucose), Ecuador (matches), Japan (tatami-omote, welsh onions and shiitake mushrooms), and Morocco (bananas).

The Committee also received some additional notifications shortly before the end of the reporting period, which will be reviewed in the year 2002, including the United States' notification under Article 12.1(b) with respect to findings of the U.S. International Trade Commission of serious injury or the threat thereof caused by increased imports of certain steel products.

Prospects for 2002

The Committee's work in 2002 will continue to focus on the reviews of safeguard actions that have been notified to the Committee and on the notification of any new or amended safeguards laws. From the comments made by other Members at the Committee's last meeting in October 2001, it can be expected that there will likely be a great deal of discussion at the next regular meeting of the Committee in April 2002

with respect to notifications made by the United States concerning the steel safeguard investigation.

8. Committee on Sanitary and Phytosanitary Measures

Status

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures establishes rules and procedures to ensure that sanitary and phytosanitary measures address legitimate human, animal and plant health concerns; do not arbitrarily or unjustifiably discriminate between Members' agricultural and food products; and are not disguised restrictions on international trade. SPS measures protect against risks associated with plant or animal borne pests and diseases, additives; contaminants; toxins and disease-causing organisms in foods, beverages, or feedstuffs. Fundamentally, the Agreement requires that such measures be based on science and developed through systematic risk assessment procedures. At the same time, the SPS Agreement preserves every WTO Member's right to choose the level of protection it considers appropriate with respect to SPS risks.

The Committee on SPS Measures is a forum for consultation on Members' existing or proposed SPS measures that affect international trade, the implementation and administration of the Agreement, technical assistance, and the activities of the international standard-setting bodies. It also includes discussions of the Agreement's provisions related to transparency in the development and application of SPS measures, special and differential treatment, technical assistance, and equivalence.

Participation in the Committee is open to all WTO Members. Certain non-WTO Members also participate as observers, in accordance with guidance agreed to by the General Council. In addition, representatives of a number of international organizations are invited to attend meetings of the Committee as observers on an *ad hoc* basis: the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the FAO/WHO Codex Alimentarius Commission, the FAO International Plant Protection Convention Secretariat (IPPC), the International Office of Epizootics (OIE), the International Organization for Standardization (ISO) and the International Trade Center (ITC).

A number of documents relating to the work of the SPS Committee are available to the public directly from the WTO website: www.wto.org. The SPS Committee documents are indicated by the symbols, "G/SPS/...." Beginning in 2000, notifications of proposed SPS measures are indicated by G/SPS/N ("N"stands for "notification")/USA (which, in this case stands for the United States of America; three letter symbols will be used to designate the WTO Member originating the notification)/X (where "x" will indicate the numerical sequence for that country). Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point shown in the box below. Minutes of the Committee meetings are issued as "G/SPS/M/..." (followed by a number). Submissions by Members (*e.g.*, statements; informational documents; proposals; etc.) and other working documents of the Committee are issued as "G/SPS/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and available to the public on the WTO's website.

Major Issues in 2001

Foot and Mouth Disease: During 2001, the Committee devoted significant time to discussion of Members' responses to the outbreak of Foot and Mouth Disease (FMD) in Europe. The initial outbreak in February 2001, and subsequent spread of the epidemic to several countries in Europe and in other countries, prompted many Members, including the United States, to take emergency actions to protect animals within their borders and control

the epidemic. As measures were implemented and the epidemic was controlled, Members reported in November 2001 that they were terminating the emergency control measures. The International Office of Epizootics provided valuable and important information regarding international standards for the control of FMD.

BSE-TSE[3]*:* The Committee also devoted considerable time to discussing Members activities regarding BSE and TSE's. Several Members have proposed and introduced measures to protect consumers and animals against BSE. The Committee discussed the need for these measure to be based on science and that international standards should be used as the basis of Members' actions, unless Members have a scientific justification for a more protective measure than that provided by the international standard. The United States anticipates that BSE will continue to be an issue of interest and concern of many Members and the Committee will have extensive discussions about the nature of the disease and measures taken by Members to protect public health and animal health.

Equivalence: At the request of developing-country Members, the Committee held several informal meetings on the provisions of Article 4 of the Agreement - Equivalence. The United States submitted a paper (G/SPS/W/111) outlining our views and the activities of regulatory agencies as they relate to equivalence. This paper and submissions from other Members enabled the Committee to develop and approve a decision of the Committee (G/SPS/19) which outlines steps designed to make it easier for Members to make use of the provisions of Article 4 of the Agreement. With the commitment of the Committee to continue to discuss certain aspects of this decision that are undefined or ambiguous, the United States agreed with the text. Several other Members agreed to the text with similar reservations.

Notifications: During several discussions in the Committee regarding specific trade concerns among Members and equivalence, Members indicated that a specific discussion on the notification requirements and process would be helpful. The Committee decided to have informal meetings on notifications and transparency in 2002.

Technical Assistance: In June 2000, the United States submitted information (G/SPS/W/181) on technical assistance which had been provided to Members on SPS issues. At the July 2001 SPS Committee meeting, the United States provided additional information describing the functions and responsibilities of two U.S. agencies that contribute to the implementation of the SPS Agreement and the technical assistance cooperative activities of these agencies. Also, this addendum updated our earlier submission to provide information on technical assistance activities since June 2000.

Transparency: The SPS Agreement provides a process whereby WTO Members can obtain information on other Members' proposed SPS regulations and control, inspection, and approval procedures, and the opportunity to provide comments on those proposals before implementing Members' make their final decisions. These transparency procedures have proved extremely useful in preventing trade problems associated with SPS measures. The United States continued to press all WTO Members to establish an official notification authority, as required by the Agreement, and to ensure that the Agreement's notification requirements are fully and effectively implemented. Each Member is also required to establish a central contact point, known as an inquiry point, to be responsible for responding to requests for information or making the appropriate referral. This inquiry point circulates notifications received under the Agreement to interested parties for comment. The SPS inquiry point for the United States is:

[3] Bovine Spongiform Encephalopathy and Transmissible Spongiform Encephalopathy

U.S. INQUIRY POINT

Office of Food Safety and Technical Services
Attention: Carolyn F. Wilson
Foreign Agricultural Service
U.S. Department of Agriculture
AG Box 1027
Room 5545 South Agriculture Building
14th and Independence Avenue, S.W.
Washington, DC 20250-1027

Telephone: (202) 720-2239
Fax: (202) 690-0677
email: ofsts@fas.usda.gov

Prospects for 2002

The Committee will continue to monitor implementation of the Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing and the Committee has been a useful forum for Members to raise concerns and then work bilaterally to resolve specific trade concerns. The number of disputes in this area is evidence of the importance which Members place on the effective operation of the Agreement. The Committee will continue to be an important forum for Members to provide information about efforts to manage and control food safety and animal health emergencies as well as ongoing food safety, animal and plant health activities that affect international trade.

In 2002, the United States expects the Committee to continue discussions on technical assistance, notifications and equivalence. To date, developed countries have submitted most of the papers and the United States will be encouraging developing-country Members to participate more actively in both formal meetings and informal consultations to identify improvements. As a result of implementation discussions in the General Council, the Committee will need to address plans for conducting a review of the Agreement as agreed upon by the General Council. Finally, the Committee will continue to monitor the development of international standards, guidelines and recommendations by standard-setting organizations. The Committee will seek to identify areas where the development of additional or new standards would facilitate international trade and provide this information to the appropriate standard-setting organization for consideration.

9. Committee on Subsidies and Countervailing Measures[4]

Status

The Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) provides rules and disciplines for the use of government subsidies and the application of remedies – through either WTO dispute settlement or countervailing duty (CVD) action – to address subsidized trade that causes harmful commercial effects. The Agreement nominally divides subsidy practices among three classes: prohibited (red light) subsidies; permitted yet actionable (yellow light) subsidies; and permitted, non-actionable (green light) subsidies.[5] Export subsidies and import

[4] For further information, see also the Joint Report of the United States Trade Representative and the U.S. Department of Commerce, *Subsidies Enforcement Annual Report to the Congress*, February 2002.

[5] Prior to 2000, Article 8 of the Agreement provided that certain limited kinds of government assistance granted for industrial research and development (R&D), regional development, or environmental compliance purposes would be treated as non-actionable subsidies so long as such assistance conformed to the applicable terms and conditions set forth in Article 8. In addition, Article 6.1 of the Agreement provided that certain other subsidies, referred to as dark amber subsidies, could be presumed to cause serious prejudice. These were: (i) subsidies to cover an industry's operating losses; (ii) repeated subsidies to cover a firm's operating losses; (iii) the direct forgiveness of debt (including grants for debt repayment); and (iv) when the *ad valorem* subsidization of a product exceeds five percent. If

substitution subsidies are prohibited. All other subsidies are permitted, yet are also actionable (through CVD or dispute settlement action) if they are (i) "specific", *i.e.*, limited to a firm, industry or group thereof within the territory of a WTO Member and (ii) found to cause adverse trade effects, such as material injury to a domestic industry or serious prejudice to the trade interests of another WTO Member. With the expiration of the Agreement's provisions on green light subsidies, at present, the only non-actionable subsidies are those which are not specific, as defined above.

Major Issues in 2001

The Committee held two regular meetings in 2001. In addition to its routine activities concerned with reviewing and clarifying the consistency of WTO Members' domestic laws, regulations and actions with Agreement requirements, the Committee continued to accord special attention to the general matter of subsidy notifications and the process by which such notifications are made to and considered by the Subsidies Committee. In this regard, the Committee developed a strategy and took action to address the poor and declining state of compliance with subsidy notifications in an effort to find a long-term solution to the problem.

The Committee, in both formal and informal meetings, extensively discussed several implementation issues referred to it by the General Council. Much of this work formed the basis for the subsidy-related implementation decisions taken at the Fourth Ministerial Conference. Additionally, the United States and other Members at both formal meetings of the Committee expressed serious concerns regarding the government financial assistance provided to the Korean DRAM industry. The issue of export credits and their treatment under the provisions of the Agreement, as interpreted in ongoing dispute settlement proceedings, was raised within the Committee as well. Finally, the Committee selected a new Member for its Permanent Group of Experts. Further information on these various activities is provided below.

Review and Discussion of Notifications: Throughout the year, Members submitted notifications of: (i) new or amended CVD legislation and regulations; (ii) CVD investigations initiated and decisions taken; and (iii) measures which meet the definition of a subsidy and which are specific to certain recipients within the territory of the notifying Member. Notifications of CVD legislation and actions, as well as updating subsidy notifications, were reviewed and discussed by the Committee at both of its regular meetings. In reviewing notified CVD legislation and subsidies, the Committee procedures provide for the exchange in advance of written questions and answers in order to clarify the operation of the notified measures and their relationship to the obligations of the Agreement.

To date, 88 Members of the WTO (counting the EU as one) have notified that they currently have CVD legislation in place, while 39 Members have not yet notified that they maintain such legislation. Among the notifications of CVD laws and regulations reviewed in 2001 were those of Burundi, Canada, Chile, Croatia, Ecuador, Jordan, Korea, Latvia, Malaysia, Morocco, Mexico, Oman,

such subsidies were challenged on the basis of these dark amber provisions in a WTO dispute settlement proceeding, the subsidizing government would have the burden of showing that serious prejudice had *not* resulted from the subsidy. However, as explained in our1999 report, a mandatory review was conducted in 1999 under Article 31 of the Agreement to determine whether to extend the application of these provisions beyond December 31 of that year. They expired on January 1, 2000 because a consensus could not be reached among WTO Members on whether to extend or the terms by which these provisions might be extended beyond their five-year period of provisional application.

Peru, and Tunisia.[6] As for CVD measures, seven WTO Members notified CVD actions taken during the latter half of 2000, whereas seven Members also notified actions taken in the first half of 2001. The Committee reviewed actions taken by Argentina, Australia, Canada, the EU, Peru, South Africa and the United States. With respect to subsidy notifications, the Committee continued its examination of new and full notifications submitted for 1998, as well as updating notifications submitted for 1999 and 2000. The table contained in Annex II of this report shows the WTO Members whose subsidy notifications were reviewed by the Committee in 2001.

As of January 1, 2002, when Membership in the WTO had reached 144, only 50 Members had submitted new and full subsidy notifications for 1998, while 43 and 35 Members, respectively, had submitted updating notifications for the 1999 and 2000 periods. Notably, 41 Members have never made a subsidy notification to the WTO.

In view of the ongoing difficulties experienced by Members, including the United States, in meeting the Agreement's subsidy notification obligations, the Committee took several actions in 2001 aimed at improving the situation. At the end of 2000, the Working Party on Subsidy Notifications was reconvened to take a fresh look at the notification problems confronting Members and develop possible long-term solutions for the Committee's consideration. Following a questionnaire to Members circulated by the Secretariat inquiring about the specific problems faced in making notifications and several informal meetings in the spring of 2001, a three-prong strategy was agreed upon to address the problems of subsidy notifications. The first prong was to examine alternative practical approaches to the frequency and nature of subsidy notifications, as well as their review. Examination of the format for a subsidy notification constitutes the second prong of the strategy –the effort began in 2001 and will continue into 2002. The third prong is the organization of a subsidy notification seminar in the fall 2002, coinciding with the regular Committee meeting, for government officials from developing countries responsible for notification.

An important action was taken by the Committee in 2001 with respect to the frequency and nature of subsidy notifications. Under Article 26 of the Agreement, "new and full notifications" are submitted every third year; while "updating notifications" are submitted in intervening years. At a special meeting held in May 2001, the Committee recognized that most Members were having significant difficulties in making their notifications, primarily due to resource constraints. Importantly, Members indicated that the effort and resources required to prepare the annual updating notifications are essentially equal to those required for new and full notifications. Generally, Members expressed their belief that their resources would be best utilized by devoting maximum effort to submitting new and full notifications, every two years, and by de-emphasizing the review of the annual updating notifications. Under this new approach, Members can concentrate their resources in alternating years, first on making their own new and full notifications, and then on reviewing other Members' notifications. It is expected that this approach will have the effect of increasing transparency, which is the objective of the notification obligation under the Agreement.

Implementation Issues: Over the course of 2001 and especially during the period just prior to the Fourth Ministerial Conference, the Committee held numerous informal and formal meetings to discuss several implementation issues. Pursuant to various General Council decisions, the

[6] In keeping with WTO practice, the review of legislative provisions which pertain or apply to both antidumping and CVD actions by a Member generally took place in the Antidumping Committee.

Committee held extensive discussions on five general topics:

- determining "export competitiveness" under Articles 27.5 and 27.6 of the Agreement, including the possibility of extending the period for establishing export competitiveness;
- special procedures, under Article 27.4 of the Agreement, for small exporter developing countries seeking an extension of the transition period for the phase-out of export subsidies;
- the appropriate methodology for calculating the permissible level for rebates of indirect taxes and import duties on exported products under Annex I of the Agreement;
- a general review of the Agreement's provisions regarding countervailing duty investigations; and,
- the methodology for the calculation of the GNP per capita threshold delineated in Annex VII of the Agreement for the designation of certain developing countries entitled to particular types of "special and differential treatment" under the Agreement.

1. Determining "Export Competitiveness" under Article 27.5 and 27.6

Under Article 27.2 developing countries not listed in Annex VII of the Agreement must phase-out their export subsidies no later than January 1, 2003. Notwithstanding this provision, Article 27.5 and 27.6 of the Agreement provide that a developing country which has reached 3.25 percent of world trade in a given product over two consecutive years must accelerate the phase-out of its export subsidies on that product. The product scope is defined as a section heading of the Harmonized System nomenclature. Application of this provision can be triggered either by a notification made by the developing country or a computation done by the WTO Secretariat at the request of another Member.

Many developing countries sought: (1) an extension of the period for establishing export competitiveness under Article 27.6 from two to five years; and, (2) a mechanism to allow developing countries that have achieved export competitiveness to resume export subsidization if exports fall below the level of export competitiveness. An expansion of the countries eligible for the special and differential treatment provided to Annex VII countries and a broadening of the product scope for the determination of export competitiveness were also sought.

Despite extensive discussions, the Committee was unable to agree on whether the two-year period could be effectively extended in some manner without violating the express terms of the Agreement, or whether, the two-year period could be calculated on an alternative basis, such as a multi-year rolling average. As to the mechanism for the resumption of export subsidization after export competitiveness is lost, numerous issues remained unresolved as to the terms under which a resumption could be authorized. Nor was agreement reached regarding the appropriate level of aggregation under the Harmonized System nomenclature when defining the product scope and the expansion of the countries eligible for the special and differential treatment provided to Annex VII countries under the Agreement. This implementation proposal was not considered at the Fourth Ministerial Conference.

2. Special Article 27.4 procedures for small exporter developing countries

As noted above, the Agreement requires developing countries to eliminate their export subsidies by January 1, 2003. Article 27.4 of the Agreement allows for an extension of this deadline on a year-to-year basis if a request is made to the Subsidies Committee by December 31, 2001. The Committee must then decide

whether an extension is justified based on relevant "economic, financial and development needs" of the developing-country Member. If the Committee grants an extension, annual consultations with the Committee must be held to determine the necessity of maintaining the subsidies.[7] If the Committee does not affirmatively sanction a continuation, the export subsidies must be phased out within two years.

Two developing-country proposals were made that would have permanently grandfathered the export subsidy programs of developing countries under certain conditions. One of the conditions proposed was that the exports of the developing country represent a small share of total world exports. Several countries, including the United States, objected to the proposed permanent exemption from the Agreement's export subsidy disciplines. Nonetheless, in an attempt to try and address the concerns of small exporter developing countries, a special procedure was discussed within the context of Article 27.4 of the Agreement under which countries whose share of world exports was not more than 0.10 percent and whose Gross National Income was not greater than $20 billion could be granted a limited extension for particular types of export subsidy programs subject to rigorous transparency and standstill provisions. While the Committee could not reach a consensus on all the particular provisions of the extension procedure –such as the length of the extension –based on the Committee's work, the Committee chairman made a recommendation to the General Council which substantially formed the basis of the procedure agreed upon as part of the implementation decision taken at the Fourth Ministerial Conference. Members meeting all the qualifications for the agreed upon special procedures will be eligible for a five-year extension of the transition period, in addition to the two years referred to under Article 27.4.[8] To date, Barbados, Belize, Costa Rica, El Salvador, Guatemala, Honduras, Jamaica, Kenya, Panama, Papua New Guinea, St. Kitts and Nevis, and St.Vincents, have applied for the special procedures under Article 27.4. The Committee will conduct a detailed review of all extension requests in 2002.

3. The appropriate methodology for the calculation of the rebate of indirect taxes and import duties

Under the Agreement's export subsidy rules, countries are permitted to rebate certain indirect taxes (*e.g.*, sales taxes) and import duties on inputs used in the production process and physically incorporated in an exported product. The Committee considered two implementation proposals with respect to this issue. The first was a request that countries be permitted to calculate the level of the rebate on an "aggregate" or "generalized" basis rather than on a product- or company-specific basis. Under such an approach, a particular rebate level would be established on an industry-wide basis and the same rate applied to each company in the industry. Due primarily to serious reservations – expressed by the United States and other developed country Members – that any aggregate methodology for calculating the rebate could result in an excessive rebate, no consensus within the Committee was reached.

The second proposal related to the question of whether indirect taxes and import duties on capital equipment used in the production of exports could be included when calculating the amount of the rebate. As noted above, under the

[7] Any extension granted by the Committee would only preclude a WTO dispute settlement case from being brought against the export subsidies at issue. A Member's ability to bring a countervailing duty action under its national laws would not be affected.

[8] In addition to agreement on the specific length of the extension, it was also agreed at the Fourth Ministerial Conference, in essence, that the Committee should look favorably upon the extension requests of Members which do not meet all the specific eligibility criteria for the special small exporter procedures but which are similarly situated to those that do meet all the criteria.

Agreement indirect taxes and import duties on *inputs* consumed in the production process can be rebated when a product is exported. However, the phrase "inputs consumed in the production process" as defined in the Agreement does not specifically include capital equipment. Due to the clarity of the language in the Agreement many countries, including the United States, voiced concern that this was not an issue of implementation and that adoption of this proposal would effectively constitute an amendment or authoritative interpretation of the Agreement – neither of which the Committee is empowered to do. Other countries expressed doubts as to how the rebate could be accurately and transparently calculated. Consequently, no consensus was reached on this issue.

4. Review of the provisions of the Agreement regarding countervailing duty investigations

The General Council referred this topic to the Committee on August 2, 2001. Brazil and India submitted papers making specific proposals as to how to clarify or, in some instances, modify the provisions of the Agreement regarding countervailing duty investigations. The proposals related to: the appropriate definitions of "domestic industry"and "like product;" the use of "facts available;" numerous calculation issues; and the conduct of annual reviews of countervailing duty orders already in place. Due to the breadth and complexity of the issues raised and the relatively short period of time prior to the Fourth Ministerial Conference, very little substantive discussion occurred with respect to the specific proposals made beyond the formal presentation of proposals. Thus, the Committee recommended to the General Council that the Committee continue to consider these issues. This recommendation was adopted as part of the implementation decision adopted at the Fourth Ministerial Conference.

In December of 2001, the Committee met and adopted a plan to examine and discuss the two previously submitted papers. The Committee must report to the General Council by July 31, 2002. In light of the anticipated rules negotiations, it is unclear the extent to which the Committee is the appropriate forum for addressing some of the proposals, especially those which affect the rights and obligations of countries under the existing Agreement.

5. The methodology for the calculation of the per capita GNP threshold in Annex VII of the Agreement

Annex VII of the Agreement identifies certain countries that are eligible for particular special and differential treatment. Specifically, the export subsidies of these countries are not prohibited and, therefore, are not actionable under the dispute settlement process. Secondly, a higher *de minimis* threshold applies in countervailing duty investigations of imports from these countries, although this standard expires at the end of 2002.[9] The countries identified in Annex VII include those WTO Members designated by the United Nations as "least-developed countries" (Annex VII(a)) as well as countries that had, at the time of the negotiation of the Agreement, a per capita GNP under $1,000 per annum and are specifically listed in Annex VII(b).[10] A country automatically "graduates" from Annex VII(b) status when its per capita GNP rises above the $1,000 threshold. When a country crosses this threshold it becomes subject to the subsidy disciplines of other developing countries.

[9] This *de minimis* for Annex VII countries is 3 percent, compared with the 2 percent for other developing countries.

[10] Annex VII(b) countries are Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. In recognition of an apparent technical error made in the initial compilation of this list and pursuant to a General Council decision, Honduras was formally added to Annex VII(b) on January 20, 2001.

Since the adoption of the Agreement in 1995, the *de facto* interpretation by the Committee of the $1,000 threshold has been current (*i.e.*, nominal or inflated) dollars. The concern with this interpretation, however, was that a country could graduate from Annex VII on the basis of inflation alone, rather than on the basis of real economic growth. The possible use of a $1000 constant 1990 dollar threshold was first raised as part of the preparatory process for the Third Ministerial Conference in Seattle, and at that time some work on different possible methodologies for deriving GNP per capita in constant 1990 US dollars was developed.[11]

In October 2001, the Chairman of the General Council requested that the Committee take up the question of the methodology for calculation of the $1000 threshold in constant 1990 US dollars. The Chairman of the Committee, in conjunction with the WTO Secretariat, developed an approach based on certain World Bank data that were used by the Uruguay Round negotiators in 1990 in developing Annex VII(b). While many Members expressed the view that they could accept this proposed methodology, other Members indicated that it was more appropriate to rely on more recently available data. Thus, it was not possible to reach a consensus on the question of methodology.

At the Fourth Ministerial Conference, it was agreed:

> . . . that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches US $1,000 in constant 1990 dollars for three consecutive years. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for calculating constant 1990 dollars. If, however, the Committee on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied. A Member shall not leave Annex VII(b) so long as its GNP per capita in current dollars has not reached US $1000 based upon the most recent data from the World Bank.[12]

Pursuant to this decision, the Committee will re-examine the methodology proposed by the Chairman of the Committee in the course of 2002.[13]

6. *Financial Support by the Government of Korea for Hynix Semiconductor*

At the two formal meetings of the Committee in 2001, the United States made statements expressing serious concerns regarding the continued financial support which various Korean government authorities have been providing to Hynix Semiconductor, Inc. This support has had the effect of shielding Hynix from market discipline and exacerbating the already distressed state of the global semiconductor market. At the May 2001

[11] While some Members were concerned that they might graduate from Annex VII due, in part, to inflation, other countries were concerned that use of constant 1990 dollars might result in their being closer to Annex VII graduation relative to their position calculated using nominal dollars.

[12] The addition of the phrase "for three consecutive years" was added at the request of Honduras which was concerned that their possible graduation from Annex VII in the near future might place them in a worse condition than those Members which avail themselves of the special procedures under Article 27.4 for small developing-country exporters.

[13] In addition to the subsidy-related implementation issues noted above, the Fourth Ministerial Conference agreed to three other proposals which were not discussed by the Committee. The first permits a Member whose GNP per capita income rose above $1000 and graduated from Annex VII to be re-included if its GNP per capita income falls back below $1000. The second reaffirms the rights of least-developed countries to provide export subsidies and to have an eight-year phase-out period for export subsidies after export competitiveness is reached with respect to a particular product. The third takes note of a proposal to treat certain types of subsidies provided by developing countries as non-actionable and urges Members to exercise due restraint with respect to challenging such measures.

meeting, Korean officials attempted to assure the United States that: (1) Hynix benefits from no government-subsidized support; and, (2) the special government-orchestrated measures, which Korea claims are intended to compensate for an underdeveloped capital market, would be of limited duration.

At the time of the November meeting, the United States again expressed concern regarding the variety and magnitude of government support for Hynix as a result of the adverse trade effects likely to result. The Korean government's financial and other support has enabled Hynix to maintain capacity and production at uneconomic levels, contributing significantly to the global supply/demand imbalance for DRAM semiconductors. Given the continued state ownership in many of Hynix's creditors, and the historical record of government influence over the allocation of credit in the Korean economy, the United States expressed its view to the Committee that it is critical for the Korean authorities to demonstrate unequivocally their commitment to the stated policy of non-interference in the commercial judgment of banks and other financial institutions with respect to the future of Hynix. In conclusion, the United States urged the Korean authorities to take immediate, transparent and affirmative steps to assure that the Korean government will not provide any additional subsidies to Hynix and that the creditors of Hynix will not be pressured or influenced by the government into taking any decisions that cannot be justified solely on commercial terms. At the November meeting, the EU made an equally strong statement while Japan and Singapore raised concerns as well.

7. Export Credits

At the May meeting, Brazil made a statement regarding the Agreement's provisions on export financing. Brazil's concerns stemmed from its participation in aircraft dispute settlement proceedings. Brazil made four basic points regarding export credits. First, the existing provisions of the Agreement – items (j) and (k) of the Illustrative List of export subsidies found in Annex I of the Agreement – covering export credit guarantees and export credits are insufficient to deal with the diversity of mechanisms utilized in the market today and are potentially unfair to developing countries. Second, the manner in which the OECD Arrangement on Guidelines for Officially Supported Export Credits was incorporated into the Agreement allows participants of that Arrangement to effectively alter the Agreement without the participation of other Members. Third, the use of the so-called "market window," pursuant to which a participant of the OECD Arrangement may depart from the OECD rules by claiming that it is operating as a private entity, is "virtually unchallengeable" and generally unavailable to developing countries. Fourth, the Appellate Body's definition and interpretation of the *de facto* export subsidies provisions in the Agreement was overly narrow and insufficient to discipline such subsidies.

In a related matter, the Committee received a communication from the OECD that was distributed at the May meeting. In this communication, the Participants to the Arrangement on Guidelines for Officially Supported Exports Credits decided to publish the country risk classifications that were used for the Premium Agreement of the Arrangement and made these classifications available on their website. The OECD also requested the Secretariat to make available to any requesting Member the full text of the Export Credit Arrangement and the Premium Agreement, unless the Committee believed that it might be more useful simply to circulate these to all Members of the Committee. In addition, in informal discussions between the WTO Secretariat, as observer to the Participants Group on the Export Credits Arrangement, and the OECD Secretariat, the possibility was discussed that representatives of the OECD Secretariat make a factual presentation on the operation of the Arrangement for interested Members.

8. Permanent Group of Experts

Article 24 of the Agreement directs the Committee to establish a Permanent Group of Experts (PGE), "composed of five independent persons, highly qualified in the fields of subsidies and trade relations." The Agreement articulates three possible roles for the PGE: (i) to provide, at the request of a dispute settlement panel, a binding ruling on whether a particular practice brought before that panel constitutes a prohibited subsidy, within the meaning of Article 3 of the Agreement; (ii) to provide, at the request of the Committee, an advisory opinion on the existence and nature of any subsidy; and (iii) to provide, at the request of a WTO Member, a "confidential" advisory opinion on the nature of any subsidy proposed to be introduced or currently maintained by that Member. (To date, the PGE has not yet been called upon to perform any of the aforementioned duties.) Article 24 further provides for the Committee to elect the experts to the PGE, with one of the five experts being replaced every year. One PGE member, Mr. A. V. Ganesan of India, resigned his membership, effective May 18, 2000, prior to the end of his term. At a special meeting in February 2001, the Committee elected Professor Okan Aktan to replace Mr. Ganesan, for the remainder of Mr. Ganesan's term, which expires in 2002. At its May 2001 regular meeting, the Committee elected Mr. Jorge Castro Bernieri to replace Mr. Gary Horlick, whose term expired in 2001.

Prospects for 2002

In 2002, the Subsidies Committee will continue its attention to implementation issues in a variety of respects. First, as noted above, the United States will continue to work with others to try to identify ways to rationalize the burdens of subsidy notification for all WTO Members without diminishing transparency or taking away from the other substantive benefits of the notification obligation. Second, the United States will participate actively in the review of other WTO Members' CVD legislation and actions, and will bring to Members' and the Committee's attention any concerns which may arise about such laws or actions, whether in general or in the context of specific proceedings. As noted above, as a direct result of the decision taken at the Fourth Ministerial Conference, the Committee will continue its examination of the provisions of the Agreement regarding countervailing duty investigations and report to the General Council by July 31, 2002. Finally, the United States will actively review the normal and special extension requests made under Article 27.4 of the Agreement to ensure the close adherence to the provisions of the Agreement and the agreed upon procedures for small exporter developing countries.

10. Committee on Technical Barriers to Trade

Status

The Agreement on Technical Barriers to Trade (TBT Agreement) establishes rules and procedures regarding the development, adoption, and application of voluntary product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. Its aim is to prevent the use of technical requirements as unnecessary barriers to trade. The Agreement applies to a broad range of industrial and agricultural products, though sanitary and phytosanitary (SPS) measures and specifications for government procurement are covered under separate agreements. It establishes rules that help to distinguish legitimate standards and technical regulations from protectionist measures. Standards, technical regulations and conformity assessment procedures are to be developed and applied on a non-discriminatory basis, developed and applied transparently, and should be based on relevant international standards and guidelines, when appropriate.

The TBT Committee[14] serves as a forum for consultation on issues associated with the implementation and administration of the Agreement. This includes discussions and/or presentations concerning specific standards, technical regulations and conformity assessment procedures maintained by a Member that are creating adverse trade consequences and/or are perceived to be violations of the Agreement. It also includes an exchange of information on Member government practices related to implementation of the Agreement and relevant international developments.

Transparency and Availability of WTO/TBT Documents: A key opportunity for the public resulting from the TBT Agreement is the ability to obtain information on proposed standards, technical regulations and conformity assessment procedures, and to provide written comments for consideration on those proposals before they are finalized. Members are also required to establish a central contact point, known as an inquiry point, which is responsible for responding to requests for information on technical requirements or making the appropriate referral.

U.S. Inquiry Point

National Center for Standards and Certification Information
National Institute of Standards and Technology (NIST)
100 Bureau Drive, Stop 2150
Gaithersburg, MD 20899-2150

Telephone: (301) 975-4040
Fax: (301) 926-1559
email: ncsci@NIST.GOV

The National Institute of Standards and Technology (NIST) serves as the U.S. inquiry point. NIST maintains a reference collection of standards, specifications, test methods, codes and recommended practices. This reference material includes U.S. Government agencies' regulations, and standards of U.S. private standards-developing organizations and foreign national and standardizing bodies. The inquiry point responds to all requests for information concerning federal, state and private regulations, standards and conformity assessment procedures. Upon request, NIST will provide copies of notifications of proposed regulations from foreign governments received under the TBT Agreement. The NIST also will provide information on central contact points for information maintained by other WTO Members. On questions concerning standards and technical regulations for agricultural products, including SPS measures, the NIST refers requests for information to the U.S. Department of Agriculture, which maintains the U.S. inquiry point under the Sanitary and Phytosanitary Agreement.

A number of documents relating to the work of the TBT Committee are available to the public directly from the WTO website: www.wto.org.

[14] Participation in the Committee is open to all WTO Members. Certain non-WTO Member governments also participate, in accordance with guidance agreed by the General Council. Representatives of a number of international intergovernmental organizations were invited to attend meetings of the Committee as observers: the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD); the International Trade Center (ITC); the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the Food and Agriculture Organization (FAO); the World Health Organization (WHO); the FAO/WHO Codex Alimentarius Commission; the International Office of Epizootics (OIE); the Organization for Economic Cooperation and Development (OECD); the UN Economic Commission for Europe (UN/ECE); and the World Bank. The International Organization of Legal Metrology (OIML), the United Nations Industrial Development Organization (UNIDO), the Latin American Integration Association (ALADI), the European Free Trade Association (EFTA) and the African, Caribbean and Pacific Group of States (ACP) have been granted observer status on an *ad hoc* basis, pending final agreement by the General Council on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

TBT Committee documents are indicated by the symbols, "G/TBT/...." Notifications by Members of proposed technical regulations and conformity assessment procedures which are available for comment are issued as: *G/TBT/N* (the "N" stands for "notification")/*USA* (which, in this case stands for the United States of America; three letter symbols will be used to designate the WTO Member originating the notification)/*X* (where "x" will indicate the numerical sequence for that country).[15] Parties in the United States interested in submitting comments to foreign governments on their proposals should send them through the U.S. inquiry point at the address above. Minutes of the Committee meetings are issued as "G/TBT/M/..." (followed by a number). Submissions by Members (*e.g.*, statements; informational documents; proposals; etc.) and other working documents of the Committee are issued as "G/TBT/W/..." (followed by a number). As a general rule, written information provided by the United States to the Committee is provided on an "unrestricted" basis and available to the public on the WTO's website.

Major Issues in 2001

The TBT Committee met three times in 2001. At the meetings, the Committee addressed implementation of the Agreement, including an exchange of information on actions taken by Members domestically to ensure implementation and ongoing compliance. A number of Members used the Committee meetings to raise concerns about specific technical regulations which affected, or had the potential to affect, trade adversely and were perceived to create unnecessary barriers to trade. U.S. interventions were primarily targeted at a variety of proposals from the European Commission that could seriously disrupt trade. The United States compiled information on the range of notifications under the TBT Agreement (G/TBT/W/115), as well as the Agreement on Sanitary and Phytosanitary Measures (SPS) (G/SPS/GEN/186), to emphasize to WTO Members that the provisions of both agreements were relevant to international trade in bio-engineered products.

The Committee conducted its sixth Annual Review of the Implementation and Operation of the Agreement based on background documentation contained in G/TBT/10, and its Sixth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement) based on background documentation contained in WTO TBT Standards Code Directory (Sixth Edition), G/TBT/CS/1/Add.5 and G/TBT/CS/2/Rev.7. Decisions and recommendations adopted by the Committee are contained in G/TBT/1/Rev.7.

A Special Meeting on Procedures for Information Exchange was held in conjunction with the Committee's second meeting in order to give Members the opportunity to discuss issues relating to information exchange and to ensure a focused review of how well notification procedures under the Agreement are functioning.

Follow-up to the Second Triennial Review of the Agreement: The primary focus of the Committee in 2001 was the work program arising from its Second Triennial Review (see G/TBT/9). The review provided the opportunity for WTO Members to review and discuss all of the provisions of the Agreement, which facilitated a common understanding of their rights and obligations under the Agreement. In follow-up to that review, in 2001 priority attention was given to technical assistance and the implementation needs of developing countries, as well as trade effects resulting from mandatory labeling requirements.

Technical Assistance: In the Second Triennial Review, the Committee recognized the importance of ensuring that solutions were

[15] Before 2000, the numbering of notifications of proposed technical regulations and conformity assessment procedures read: "G/TBT/Notif./..." (followed by a number).

targeted at the specific priorities and needs identified by individual or groups of developing-country Members. This called for effective coordination at the national level between authorities, agencies, and other interested parties to identify and assess priority infrastructure needs of a specific Member. The Committee recognized the need for coordination and cooperation between donor Members and organizations, and between the Committee, other relevant WTO bodies, and other donor organizations. In order to enhance the effectiveness of technical assistance and cooperation, the Committee agreed to develop a demand-driven technical cooperation program beginning with the identification and prioritization of needs by developing countries, and working with other relevant international and regional organizations. To this end, work was begun to develop a survey both to elicit the needs of developing countries and to target assistance provided by donors. The Committee agreed to assess progress made in the context of the Third Triennial Review.

Labeling: The Committee intensified its exchange of information on issues associated with mandatory labeling requirements, noting the frequency with which specific concerns regarding labeling were raised at meetings of the Committee during discussions on implementation, and stressing that although such requirements can be legitimate measures, they should not become disguised restrictions on trade.

Prospects for 2002

The Committee will continue to monitor implementation of the Agreement by WTO Members. The number of specific trade concerns raised in the Committee appears to be increasing and the Committee has been a useful forum for Members to raise concerns and facilitate bilateral resolution of specific concerns. In 2002, the United States expects continued attention to issues relating to technical assistance and implementation of the Agreement by developing-country Members in particular. Priority will be given to enhancing the awareness of Committee Members regarding the trade impediments which can result from mandatory labeling requirements, the relevance of existing trade disciplines, and the need for good regulatory practice in the development and adoption of technical regulations.

11. Committee on Trade-Related Investment Measures

Status

The Agreement on Trade-Related Investment Measures (TRIMS) prohibits investment measures that violate the GATT Article III obligations to treat imports no less favorably than domestically produced products, or the GATT Article XI obligation not to impose quantitative restrictions on imports. The Agreement thus expressly requires elimination of measures such as those that require or provide benefits for the incorporation of local inputs or "local content requirements" in the manufacturing process, or measures that restrict a firm's imports to an amount related to its exports or related to the amount of foreign exchange a firm earns ("trade balancing requirements"). It also includes an illustrative list of measures that violate its requirements. The Agreement requires that any such measures existing as of the date of entry into force of the WTO (January 1, 1995) be notified and eventually eliminated. Developed countries were required to bring notified measures into conformity by January 1, 1997. Developing countries had until January 1, 2000 unless additional time was granted by the Council for Trade in Goods (CTG), and least-developed countries have until January 1, 2002.

Major Issues in 2001

The TRIMS Committee held no meetings this year. As was the case last year, the key TRIMS issues related to Article 5.3, which outlines the process for granting an extension of the transition periods for developing countries, and Article 9, which describes a mandated review of

the Agreement, were both required topics for discussion in the Council for Trade in Goods (CTG), rather than in the TRIMS Committee (see separate section on the CTG).

The Committee did produce two documents this year. The first was on notifications under Article 6.2 of the Agreement. Under Article 6.2, Members with non-conforming TRIMS must provide a notification to the WTO regarding the publications in which information on such measures can be found. The other document was Part I of a report drafted by the WTO Secretariat and UNCTAD on the impact of TRIMS for developing countries. This portion of the report describes definitions of performance requirements found in various agreements as well as the disciplines applied to such measures. The United States is still reviewing the report and has not yet commented on it. Part II of the report, which is not yet available, will focus specifically on developing country experiences with TRIMS.

Prospects for 2002

Once both portions of the report on the impact of TRIMS have been drafted, consensus in the CTG on the scope of the work to be undertaken in response to the Article 9 mandate may be possible which may invigorate discussions in the TRIMS Committee. Absent such a mandate, work in the TRIMS Committee will be limited.

12. Textiles Monitoring Body

Status

The Textiles Monitoring Body (TMB), established in the Agreement on Textiles and Clothing (ATC), supervises the implementation of all aspects of the Agreement. In 2001, TMB membership was composed of appointees and alternates from the United States, the EU, Japan, Canada/Norway, Switzerland/Turkey, Brazil, Thailand, Pakistan/Macau, India/Egypt, and Hong Kong/Republic of Korea. Upon its accession in December 2001, China assumed membership on the TMB. Each TMB member serves in a personal capacity.

The ATC succeeded the Multifiber Arrangement (MFA) as an interim arrangement establishing special rules for trade in textile and apparel products on January 1, 1995. All Members of the WTO are subject to the disciplines of the ATC, whether or not they were signatories to the MFA, and only Members of the WTO are entitled to the benefits of the ATC. The ATC is a ten-year, time-limited arrangement which provides for the gradual integration of the textile and clothing sector into the WTO and provides for improved market access and the gradual and orderly phase-out of the special quantitative arrangements that have regulated trade in the sector among the major exporting and importing nations.

The United States has implemented the Agreement on Textiles and Clothing in a manner in which ensures that the affected U.S. industries and workers as well as U.S. importers and retailers have a gradual, stable and predictable regime under which to operate during the quota phase-out period. At the same time, the United States has aggressively sought to ensure full compliance with market opening commitments by U.S. trading partners, so that U.S. exporters may enjoy growing opportunities in foreign markets.

Under the ATC, the United States is required to "integrate" products which accounted for specified percentages of 1990 imports in volume over three stages during the course of the transition period, that is, to designate those textile and apparel products for which it will henceforth observe full GATT disciplines. Once it has "integrated" a product, a WTO Member may not impose or maintain import quotas on that product other than under normal GATT procedures, such as Article XIX. As required by Section 331 of the Uruguay Round Agreements Act, the United States selected the products for early integration after seeking public comment, and published the list of items at the outset of the transition period, for

purposes of certainty and transparency. The integration commitments for stages one and two were completed in 1995 and 1998. The United States notified the TMB in 2001 of the integration commitments for stage three and implemented these commitments on January 1, 2002. The list for all three stages may be found in the *Federal Register*, volume 60, number 83, pages 21075-21130, May 1, 1995.

Also keyed to the ATC "stages" is a requirement that the United States and other importing Members increase the annual growth rates applicable to each quota maintained under the Agreement by designated factors. Under the ATC, the weighted average annual growth rate for WTO Members' quotas increased from 4.9 percent in 1994 to 5.7 percent in 1995 and 7.3 percent in 2001.

Article 5 of the ATC requires that Members cooperate to prevent circumvention of quotas by illegal transshipment or other means. The United States actively worked with trading partners to improve cooperation and information sharing, and concluded a new agreement with Hong Kong to this end. The United States also established a Textile Transshipment Task Force at the U.S. Customs Service to improve enforcement of textile quotas at U.S. borders and has tightened enforcement actions vis-a-vis other trading partners where an improved bilateral agreement was not possible.

Major Issues in 2001

Safeguard Restraints: A special three-year safeguard is provided in the ATC to control surges in uncontrolled imports that cause or threaten to cause serious damage to domestic industry. Actions taken under the safeguard are automatically reviewed by the TMB. In 2001, the TMB reviewed a safeguard action taken by Poland on synthetic fiber imports from Romania. The TMB found that Poland had not demonstrated serious damage or actual threat thereof with respect to these imports.

Notifications and Other Issues: A considerable portion of the TMB's time was spent reviewing notifications made under Article 2 of the ATC dealing with textile products integrated into normal GATT rules and no longer subject to the provisions of the ATC. WTO Members wishing to retain the right to use the Article 6 safeguard mechanism were required in 2001 to submit a list of products comprising at least 18 percent by trade volume of the products included in the annex to the ATC. A number of these notifications were defective for various reasons and in a number of cases the TMB's review has carried into 2002. The TMB expressed concern that a number of countries which announced their intention to retain the right to use Article 6 safeguards failed to make the required integration notification. TMB documents are available on the WTO's web site: http://www.wto.org. Documents are filed in the Document Distribution Facility under the document symbol "G/TMB." The TMB's report on the implementation of the second stage of the ATC covering the years 1998-2001 appears as document G/L/459.

Prospects for 2002

The United States will continue to monitor compliance by trading partners with market opening commitments, and will raise concerns regarding the implementation of these commitments in the TMB or other WTO fora, as appropriate. The United States will also pursue further market openings, including in the negotiation of new Members' accessions to the WTO. In addition, the United States will continue to respond to surges in imports of textile products which cause or threaten serious damage to U.S. domestic producers. The United States will also continue efforts to enhance cooperation with U.S. trading partners and improve the effectiveness of customs measures to ensure that restraints on textile products are not circumvented through illegal transshipment or other means.

13. Working Party on State Trading

Status

Article XVII of GATT 1994 requires Members to place certain restrictions on the behavior of state trading firms and on private firms to which they accord special or exclusive privileges to engage in importation and exportation. Among other things, Article XVII requires Members to ensure that these "state trading enterprises," act in a manner consistent with the general principle of non-discriminatory treatment; *e.g.*, to make purchases or sales solely in accordance with commercial considerations, and to abide by other GATT disciplines. To address the ambiguity regarding which types of firms fall within the scope of "state trading enterprises," agreement was reached in the Uruguay Round on "The Understanding on the Interpretation of Article XVII." It provides a working definition of a state trading enterprise and instructs Members to notify the Working Party of all firms in their territory that fall within the agreed definition, whether or not such entities have imported or exported goods.

A WTO Working Party was established to review the notifications of state trading enterprises, and their adequacy, and develop an illustrative list of relationships between Members and state trading enterprises and the kinds of activities engaged in by these enterprises. All Members are required under Article XVII of GATT 1994 and paragraph 1 of the Understanding to submit annually notifications of their state trading activities.

The Uruguay Round ensured, for the first time, that the operation of agricultural state trading enterprises would be subject to international scrutiny and disciplines. Before the Uruguay Round, agricultural products were effectively outside the disciplines of GATT 1947. This exclusion limited the scrutiny of state trading enterprises since many of them directed trade in agricultural products. The lack of tariff bindings on agricultural products in most countries also limited the scope of GATT 1947 disciplines because without tariff bindings state trading enterprises could capriciously raise import duties and/or domestic mark-ups on imported products.

The Uruguay Round Agreement on Agriculture marked an important step in bringing the activities of agricultural state trading entities under the same disciplines that apply to non-agricultural products. All agricultural tariffs (including tariff-rate quotas) are now bound. While further work is needed on the administration of tariff-rate quotas, bindings do act to limit the scope of state traders to manipulate imports. Likewise, the disciplines on export competition, including value and quantity ceilings on export subsidies, apply fully to state trading enterprises. U.S. agricultural producers and exporters have expressed concerns about the operation of certain state trading enterprises, particularly single-desk importers or exporters of agricultural products and called for more meaningful disciplines.

Major Issues in 2001

New and full notifications were first required in 1995 and, subsequently, every third year thereafter, while updating notifications are to be made in the intervening years, indicating any changes. As of October 2001, 25 Members submitted new and full notifications for 2001. In 1998, the previous period requiring full notification by Members, 45 Members submitted new and full notifications. In the intervening period, 34 Members submitted updating notifications for 2000, and 39 Members submitted updating notifications for 1999.

The Working Party held one formal meeting in October 2001 to review Member notifications. During the meeting, the Working Party reviewed 57 notifications, including the 25 new and full notifications. At the meeting, the Chairman made statements concerning the need for timely compliance with notification requirements.

Prospects for 2002

As part of the mandated agricultural negotiations already underway, several countries have identified issues to be addressed in negotiations related directly to measures used by state trading enterprises, such as in tariff-rate quota administration or export competition. Several countries have called for stricter disciplines on privileges enjoyed by state trading enterprises. The United States has tabled a proposal, to be further discussed in 2002, that calls for the development of new disciplines on agricultural export state trading enterprises that would ensure export transactions are non-discriminatory and transparent. Specifically, disciplines should be established that eliminate exclusive rights of single desk exporters and importers, strengthen notification requirements, and eliminate the use of government funds or guarantees to finance potential operational deficits or to otherwise insulate state trading enterprises from market or pricing risk.

The Working Party on state trading enterprises will contribute to the ongoing discussion of these and other state trading issues through its review of new notifications and its examination of what further information might be appropriate to notify to enhance transparency of state trading enterprises. In anticipation of more expanded negotiations during the year, the Working Party also will intensify efforts to improve the notification record.

C. Council for Trade in Services

Status

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership. The Agreement provides a legal framework for addressing barriers to trade and investment in services. It includes specific commitments by WTO Members to restrict their use of those barriers and provides a forum for further negotiations to open services markets around the world. These commitments are contained in national schedules, similar to the national schedules for tariffs. The Council for Trade in Services (CTS) oversees implementation of the GATS and reports to the General Council.

Major Issues in 2001

The major activity of the Council this year consisted of the Built-In-Agenda (BIA) negotiations described at the beginning of this chapter. In addition to the BIA, the CTS is conducting two previously agreed reviews.

The air transport review, required in the GATS Annex on Air Transport Services, began in late 2000 and continued in 2001. The review examines "developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector." While a small number of countries have advocated changes to the current exclusion, the United States has taken the position that to date bilateral and plurilateral venues outside the WTO have proven to be effective in promoting liberalization in this important sector. In October 2001, the United States submitted a written statement presenting these views (available at http://docsonline.wto.org:80/DDFDocuments/t/S/C/W198.doc).

The second review, regarding the status of basic telecommunications accounting rates under GATS MFN provisions, was provided for in the course of the 1997 basic telecommunications negotiations and continued through 2001. During that review, some Members requested that those seeking to retain a "gentleman's agreement" not to bring a dispute on accounting rates on MFN grounds explain why there is a need to retain this agreement. The United States supports a more thorough examination of why

Members need to retain such an agreement, particularly in light of increased competition in the telecommunications sector.

Separately, at the initiative of the United States, the CTS took steps to ensure that preferential free trade agreements are reviewed for their consistency with countries' GATS obligations. In 2001, the CTS decided to refer nine such agreements to the WTO Committee on Regional Trade Agreements for review.

Prospects for 2002

The air transport review will continue in 2002. The main work of the CTS, however, will be related to the WTO services negotiations described at the beginning of this chapter.

1. Agreement on Basic Telecommunications Services

Status

The WTO Agreement on Basic Telecommunication Services, which came into force in February 1998, opened over 95 percent of the world telecommunications market, by revenue, to varying levels of competition. The range of services and technologies covered by the Agreement ranges from submarine cables to satellite systems, from broadband data to cellular services, to business networks based on the Internet. The majority of WTO Members have made regulatory as well as market access commitments, ensuring adherence to a multilateral framework for promoting competition in this sector. The Philippines, and Papua New Guinea made commitments that have yet to be ratified. Brazil's offer was contingent on expected improvements, details of which, however, were not accepted by other WTO Members.

Through the Agreement on Basic Telecommunications, the United States has largely succeeded in shaping an international consensus that telecommunications monopolies must be replaced with competitive markets for any economy to enjoy the benefits of the digital economy.

Accordingly, WTO Members around the world are rewriting rules to permit effective competition and to promote the growth of new markets. The results continue to promote growth: usage of telecommunications networks has increased as prices have dropped, fueling new services and introducing new efficiencies throughout economies. With demand for advanced services, including the Internet, new entrants willing to innovate with different technologies are creating markets that would never have developed had control of other nations' networks remained in the hands of monopolists.

As a result of this Agreement, U.S. firms have invested billions of dollars abroad, extending their networks, bringing down the cost of communications for U.S. consumers and businesses, and laying the infrastructure for global electronic commerce. The experience U.S. firms have gained in developing competitive markets in the United States has provided an enormous advantage in these newly opened markets, allowing them to bring to these markets the same innovation and efficiency U.S. consumers have long enjoyed. Opening foreign markets has had immediate benefits for U.S. consumers and businesses as well. Prices for calls to many competitive markets now differ little from domestic long-distance prices.

In addition to fueling growth in new services, market liberalization has stimulated a boom in equipment sales. U.S. manufacturers have been major beneficiaries in the growth of a global market for telecommunications equipment, with U.S. equipment exports in 2000 increasing 23 percent over the previous year to $28 billion. This spending is largely dedicated to investment in new networks, or upgrades to existing networks, driven by competitive pressures.

Major issues in 2001

Governments have recognized the value of reducing the governmental role in the supply of telecommunications services, and have continued to divest shares in government-owned operators – including in Germany, Greece, Israel, Japan, Korea, Norway and Taiwan. This trend is expected to continue. Governments have also taken significant steps to increase market access opportunities through pro-competitive regulatory initiatives, including the unbundling directive in the EU and establishment of dominant carrier regulation in Japan. Newly-acceding WTO Members, such as China also brought into force broad-based telecommunications commitments in 2001.

Prospects for 2002

The global investment needs in the telecommunications sector, and U.S. firms' interest in meeting this demand show no sign of abating. Demand for high-capacity (broadband) services on wireline networks and the development of advanced wireless services (*e.g.* so-called Third Generation services) ensure that competitive opportunities, and the importance of the Agreement as a framework for ensuring market access, will increase.

Given the recent trend in unilateral liberalization, prospects are good that the WTO services negotiations now underway will expand existing commitments to cover a broader range of telecommunications sub-sectors with fewer market access limitations. In regions that were previously not a major market focus (*e.g.*, in developing countries) there is substantial room for improved commitments.

2. Agreement and Committee on Trade in Financial Services

Status

The Committee on Trade in Financial Services (CTFS) met four times in 2001. It serves as a forum for discussion of important issues related to WTO Members' existing liberalization commitments and for technical approaches regarding further liberalization.

Major Issues in 2001

Several WTO Members reported on developments under their financial services regimes. The United States provided information on the processes it follows to ensure transparency in its development and application of financial services regulations. The United States encouraged other countries to provide similar information on their national regimes for development of regulations.

The United States also worked with other trading partners to maintain pressure on those few countries that have not ratified their commitments under the 1997 Financial Services Agreement - the Fifth Protocol to the GATS - to do so as quickly as possible and to provide status reports of progress underway. In October, 2001, the Dominican Republic notified that it had completed its domestic ratification procedures. The United States expects that the Dominican Republic will complete the procedures necessary to accept the Fifth Protocol in the near future. Six countries – Bolivia, Brazil, Jamaica, Poland, the Philippines and Uruguay – have not yet ratified their commitments or accepted the Protocol. Progress was reported by the majority of these six countries.

Prospects for 2002

Work of the CTFS will continue to pick up pace in 2002. The CTFS will enable WTO Members to hold substantive discussions of some of the issues raised in negotiating proposals tabled in financial services.

3. Working Party on Domestic Regulation

Status

GATS Article VI, on Domestic Regulation, directs the CTS to develop any necessary disciplines "with a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services." A 1994 Ministerial Decision had assigned priority to the professional services sector, for which the Working Party on Professional Services (WPPS) was established. The WPPS developed Guidelines for the Negotiation of Mutual Recognition Agreements in the Accountancy Sector, adopted by the WTO in May 1997. The WPPS completed Disciplines on Domestic Regulation in the Accountancy Sector in December 1998 (The texts are available at www.wto.org/english/news_e/pres97_e/pr73_e.htm and www.wto.org/english/news_e/ pres98_e/pr118_e.htm, respectively.)

After the completion of the Accountancy Disciplines, in May 1999 the CTS established a new Working Party on Domestic Regulation (WPDR) which also took on the work of the predecessor WPPS and its existing mandate. Using the experience from accountancy, the WPDR is now charged with determining whether these or similar disciplines may be generally applicable across sectors. The Working Party is to report its recommendations to the CTS not later than the conclusion of the services negotiations.

Major Issues in 2001

With respect to development of generally applicable regulatory disciplines, Members have discussed needed improvements in GATS transparency obligations, which the United States supports. Members also have begun discussion of possible disciplines aimed at ensuring that regulations are not more trade restrictive than necessary to fulfill legitimate objectives for the full range of service sectors. The United States has taken a deliberate approach in this second area and has supported discussion first of problems or restrictions for which new disciplines would be appropriate.

To continue work on professional services, Members agreed to solicit views on the accountancy disciplines from their relevant domestic professional bodies, addressing whether those other professions would favor use of the accountancy disciplines with appropriate modifications. As agreed, Members contacted their domestic professional bodies, requesting comments on the applicability of the accountancy disciplines to those professions. Some professions in various countries found that the disciplines, with perhaps a few modifications, could apply to their profession; some professions in several countries found otherwise. Given the large number of professions and Member countries, the information thus far is incomplete and work is continuing. Members also reviewed a list of international professional organizations, compiled by the Secretariat from Member submissions, and are considering whether the organizations listed are the appropriate ones to consult regarding the applicability of the accountancy disciplines to those professions.

Prospects for 2002

The Working Party will continue discussion of possible regulatory disciplines, both horizontal and sector-specific, to promote the GATS objective of effective market access.

The work program on accounting was an important step in the multilateral liberalization of this important sector. While the United States was disappointed that Members ultimately were not able to agree to early application of the accountancy disciplines, the disciplines remain open for improvement before they are to become effective at the conclusion of the current GATS negotiations. The United States will be working to improve the accountancy disciplines, as well as working with

interested U.S. constituencies to consider their applicability to other professions.

4. Working Party on GATS Rules

Status

The Working Party on GATS Rules was established to determine whether the GATS should include new disciplines on safeguards, government procurement, or subsidies.

Major Issues in 2001

Of the three issues, the GATS established a deadline only for safeguards. In 2000, this deadline was again extended, to March 2002, reflecting the continuing disagreement among WTO Members on both the desirability and feasibility of a safeguards provision similar to the WTO provisions for goods.

Discussions were more focused in 2001 than in previous years, benefitting from submissions by ASEAN, Canada, Mexico, Mauritius, Argentina, and Chile, Switzerland, and Costa Rica. The United States also submitted a paper arguing that for safeguards to be desirable in the services context they would need to be shown to promote liberalization of services trade. In the first part of the year, discussion among Members focused on feasibility of safeguards, and addressed concepts including domestic industry, acquired rights, modal application of safeguards, situations justifying safeguards, and indicators and criteria to determine injury and causality. In its submission, the United States argued that a case for the desirability of safeguards has not been made and needs to be discussed. All discussions were without prejudice to the question of whether the GATS should include such provisions.

Regarding government procurement, work continued on definitional questions relevant to services and how such disciplines would relate to the results of ongoing negotiating in the WTO Working Group on Transparency in Government Procurement.

With respect to subsidies negotiations, the Committee is working through a "checklist" of issues to help understand better whether new provisions are appropriate in this area, including identification of trade distortions caused by subsidy-like measures. Discussion was limited in this area due to the Working Party's increased focus on safeguards resulting from the March 2002 deadline.

Prospects for 2002

Information-gathering and discussion of all three issues will continue. The continuing sharp divergence of views on safeguards may result in a decision to extend the negotiating deadline once again.

5. Committee on Specific Commitments

Status

The Committee on Specific Commitments examines ways to improve the technical accuracy of scheduling commitments, primarily in preparation for the GATS negotiations, and oversees application of the procedures for the modification of schedules under Article XXI of the GATS. The Committee also oversees implementation of commitments in country schedules in sectors for which there is no sectoral body, currently all sectors except financial services.

Major Issues in 2001

The Committee concluded its work on revising scheduling guidelines. These guidelines, which originally were developed by the GATT Secretariat for use in scheduling country commitments during the Uruguay Round, are intended to improve transparency and consistency of new commitments. The CTS formally adopted the revised guidelines in March 2001.

The Committee also continued work on improving classification of services in individual sectors for which problems have been

identified. The United States has advocated changes in express delivery services, energy services, environmental services, and legal services and has made submissions in each of these areas.

At the end of 2001, the Committee decided to begin work on procedures for consolidation of country schedules; these procedures will be important in light of new market access and national treatment expected in the current GATS negotiations.

Prospects for 2002

Work will continue on technical issues in support of the ongoing negotiations.

D. Council on Trade-Related Aspects of Intellectual Property Rights

Status

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) is a multilateral agreement that sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated- circuit layout designs, and undisclosed information. Minimum standards are established by the TRIPS Agreement for the enforcement of intellectual property rights in civil actions for infringement and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement requires as well that, with very limited exceptions, WTO Members provide national and most-favored-nation treatment to the nationals of other WTO Members with regards to the protection and enforcement of intellectual property. In addition, the TRIPS Agreement is the first multilateral intellectual property agreement that is enforceable between governments through WTO dispute settlement provisions.

The TRIPS Agreement entered into force on January 1, 1995, and its obligations to provide "most favored nation" and national treatment became effective on January 1, 1996 for all Members. However, some obligations are phased in based on a country's level of development. Developed country Members were required to implement by January 1, 1996; developing-country Members generally had to implement by January 1, 2000; and least-developed country Members must implement by January 1, 2006. However, based on a proposal made by the United States, Ministers agreed in Doha to change the implementation date for least-developed Members with respect to certain obligations related to pharmaceutical products to 2016 as part of the Declaration on the TRIPS Agreement and Public Health. Several specific obligations became effective on January 1, 1995, including a general "standstill" obligation, and, with respect to Members that do not provide patent protection for pharmaceuticals and agricultural chemicals, an obligation to provide a patent "mailbox" in which to file applications for such inventions to preserve a filing date, and an obligation to provide exclusive marketing rights systems.

TRIPS Council: The WTO TRIPS Council monitors implementation of the TRIPS Agreement, provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement. The TRIPS Agreement is important to U.S. interests and has yielded significant benefits for U.S. industries and individuals, from those engaged in the pharmaceutical, agricultural chemical, and biotechnology industries to those producing motion pictures, sound recordings, software, books, magazines, and consumer goods.

Major Issues in 2001

In 2001, the TRIPS Council held four formal meetings, including several "special discussion" sessions on the issue of intellectual property and access to medicines. In addition to continuing its work reviewing the implementation of the

Agreement by developing countries and newly acceding Members, the Council's work in 2001 focused on defining the TRIPS issues to be addressed in the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health.

Review of Developing-Country Members' TRIPS Implementation: As a result of the Agreement's staggered implementation provisions, the TRIPS Council during 2001 devoted much of its time to reviewing the Agreement's implementation by developing-country Members and newly acceding Members as well as to providing assistance to developing-country Members so they can fully implement the Agreement. In particular, the TRIPS Council called for developing-country Members to respond to the questionnaires already answered by developed country Members regarding their protection of geographical indications and implementation of the Agreement's enforcement provisions, and to provide detailed information on their implementation of Article 27.3(b) of the Agreement that permits Members to exclude from patentability plants, animals, and essential biological processes for producing plants and animals. The Council also concentrated on institution building internally and with the World Intellectual Property Organization (WIPO). During the TRIPS Council meetings, the United States continued to press for full implementation of the TRIPS Agreement by developing-country Members and participated actively during the reviews of legislation by highlighting specific concerns about how individual Member's had implemented their obligations.

During 2001, laws of the following 50 Members were reviewed: in April - Bolivia, Cameroon, Congo, Grenada, Guyana, Jordan, Namibia, Papua New Guinea, Saint Lucia, Suriname, Venezuela; in June - Albania, Argentina, Bahrain, Botswana, Costa Rica, Cote d'Ivoire, Croatia and St. Kitts and Nevis; in July - Dominica, Dominican Republic, Egypt, Fiji, Georgia, Honduras, Jamaica, Kenya, Mauritius, Morocco, Nicaragua, Oman, The Philippines and United Arab Emirates; in November - Antigua and Barbuda, Barbados, Brazil, Brunei Darussalam, Cuba, Gabon, Ghana, India, Lithuania, Malaysia, Pakistan, Sri Lanka, Thailand, Tunisia, Uruguay and Zimbabwe.

Intellectual Property and Access to Medicines: Health activists and certain WTO Members have expressed concern about the relationship between access to essential drugs in low-income countries and the obligations under the TRIPS Agreement related to pharmaceuticals, particularly in the dire circumstances of the HIV/AIDS epidemic in sub-Saharan Africa.

Patents are widely acknowledged as providing the incentive for investment in research and development (R&D) to bring new and more effective pharmaceutical products to market; although there is no cure for HIV/AIDS at present, there is hope that research efforts currently under way will yield results. However, critics have expressed concern that by requiring developing countries to provide pharmaceutical patent protection, TRIPS enables pharmaceutical companies to charge high prices for essential drugs thereby limiting their availability in low-income markets.

These concerns have been expressed despite the fact that TRIPS does not require least-developed Members to provide patent protection until 2006 and developing countries, including Egypt and India, enjoy a transition from the deadline of January 1, 2000 to January 1, 2005. Such concerns also failed to take into account the extent to which essential drugs are patent-protected in markets hardest hit by pandemics such as HIV/AIDS. For example, during the course of the 2001, researchers at Harvard University published a study specifically aimed at uncovering the extent to which antiretroviral drugs used to treat HIV/AIDS were patented in Africa, the continent hardest hit by the pandemic. The report concluded, inter alia, that "anti-retroviral drugs are patented in few African countries.... We conclude that a variety of de facto barriers are more responsible for

impeding access to antiretroviral treatment, including but not limited to the poverty of African countries, the high cost of antiretroviral treatment, national regulatory requirements for medicines, tariffs and sales taxes, and, above all, a lack of sufficient international financial aid to fund anti-retroviral treatment."

This issue has emerged in the wider context of a campaign to provide better access to essential drugs for the treatment of health and related problems in needy populations. The Accelerating Access Initiative was launched by UNICEF, UNFPA, WHO, the World Bank, and the UNAIDS Secretariat in May 2000, on the basis of offers by five pharmaceutical manufacturers to supply anti-retroviral drugs at reduced prices for use in developing countries; other manufacturers have since responded to the Access initiative.

In June 2001, a Special Session of the General Assembly on HIV/AIDS endorsed the Global Fund to fight HIV/AIDS, malaria, and tuberculosis in developing countries. The Global Fund had been announced earlier in the year by the Secretary-General of the UN. The United States was the founding donor to this unique and distinctive approach to combating the nearly six million deaths each year attributed to these diseases.

The United States has taken a leadership role in responding to the global challenge of the HIV/AIDS pandemic. The United States is the largest bilateral donor of funds for HIV/AIDS assistance, in support of HIV/AIDS prevention and care and treatment programs in developing countries. In addition, the US invests over $2 billion per year on HIV/AIDS research. The United States was the first contributor, to the new "Global Fund to fight AIDS, Tuberculosis, and Malaria" with an initial contribution of $200 million.

However, because of the concerns expressed about the WTO TRIPS Agreement, the United States has also taken a leadership role in trying to address these concerns, through discussions in the TRIPS Council and other fora.

Following a request from Zimbabwe on behalf of the African Group, the United States was the first WTO Member to agree that the Council should take up the issue of "Intellectual Property and Access to Medicines." The objective of these discussions was to enable Members to discern more clearly the relationship between the TRIPS Agreement and the public policy objective of affordable access to patent-protected essential drugs, and to identify an agenda of points requiring further discussion; this included clarification of the Agreement's flexibility provisions so as to minimize the potential for disputes.

The United States supported this discussion in the hope that through this dialogue, Members would come to appreciate the important role the TRIPS Agreement plays in stimulating development and commercialization of new life-saving drugs. The United States also hoped that this dialogue would result in a clearer understanding of existing flexibility in the Agreement which enables Members to ensure that such drugs are available to their citizens, particularly those that are unable to afford basic medical care. The United States consistently expressed the view that TRIPS strikes the proper balance between these two objectives. We expressed concern that some have quite incorrectly blamed the Agreement for health crises or claimed that it stands in the way of resolving such crises. Quite the contrary, Members have the ability under the Agreement to implement their obligations in a way that fully supports their national health care objectives. On the other hand, without the economic incentives provided by patent systems, there would be far fewer drugs available for the treatment and cure of life-threatening diseases and conditions and distribution of those that did exist would be far more limited.

The United States expressed its commitment to strong intellectual property protection but also

to ensuring Members are able to use the flexibility in the TRIPS Agreement where necessary to meet their health care objectives. In February 2001, the Bush Administration reaffirmed the commitment of the United States to a flexible approach on health and intellectual property. Under this policy, we have informed WTO Members that, as they take steps to address major health crises, such as the HIV/AIDS crisis in sub-Saharan Africa and elsewhere, the United States would raise no objection if Members availed themselves of the flexibility afforded by the WTO TRIPS Agreement.

While supportive of the use of the flexibility in the TRIPS Agreement, the United States recognizes that a comprehensive approach is needed to serious health problems. The TRIPS Agreement – its obligations and flexibility – is at most one element of the equation. To deal with serious health problems, countries need to stress education and prevention as well as care and treatment if health crises are to be eliminated. Health experts inform us that the cost of drugs is only one of many important issues that must be addressed in any health crisis. Effective drug treatment necessitates urgent action to strengthen health management systems particularly directed to drug distribution and patient monitoring. Appropriate drug selection policies and standard treatment guidelines; training of care providers at all levels; adequate laboratory support to diagnose and monitor complex therapies; and systems for ensuring that the right drugs are used for the right purpose and in the right amount are all required to address the HIV/AIDS crisis.

We must recognize that even if enough drugs to treat every single HIV positive person were provided, free of charge, an adequate infrastructure to deliver them and monitor their use does not appear to exist in many areas most in need. To ensure that healthcare is available, particularly to those unable to afford basic medical care, according to health experts, each country must also develop its medical and public health infrastructure, increase the resources allocated to health care, and take other appropriate steps. The Director General of the World Health Organization, Dr. Brundtland, has made the following statements about the key factors to improve access to medicines: "We have heard quite clearly that the price of drugs matters, it matters to poor people, and it matters to poor countries. But little progress will be possible without a significant investment in building effective health systems... just making drugs available - even at no cost - does not guarantee that they will be utilized. All other pieces of the picture have to be in place as well: the distribution systems, the partnerships between public and private providers; the agreements between governments and development agencies; and clear and explicit goals and objectives."

Ultimately, the special discussions in the TRIPS Council, and further work on the issue of intellectual property and public health in Doha, Qatar, resulted in WTO Ministers adopting the Declaration on the TRIPS Agreement and Public Health.

The declaration sends a strong message of support for the TRIPS Agreement, confirming that it is an essential part of the wider national and international response to the public health crises that afflict many developing and least-developed Members of the WTO, in particular those resulting from HIV/AIDS, tuberculosis and malaria. Ministers worked in a cooperative and constructive fashion to produce a political statement that answers the questions identified by certain Members regarding the flexibility inherent in the TRIPS Agreement. This strong political statement demonstrates that TRIPS is part of the solution to these crises. The statement does so, without altering the rights and obligations of WTO Members under the TRIPS Agreement, by reaffirming that Members are maintaining their commitments under the Agreement while at the same time highlighting the flexibilities in the Agreement.

The United States is pleased that this Declaration reflects and confirms our profound

conviction that the exclusive rights provided by Members as required under the TRIPS Agreement are a powerful force supporting public health objectives. As a consequence of Ministers' efforts, we believe those Members suffering under the effects of the pandemics of HIV/AIDS, tuberculosis and malaria, particularly those in sub-Saharan Africa, should have greater confidence in meeting their responsibilities to address these crises.

The United States is committed to working with the international community to ensure that additional funding and resources are made available to the least-developed and developing-country Members to assist them in addressing their public health care problems.

Several important points need to be emphasized about the Doha Decision:

- The Declaration recognizes and confirms the important link that exists between the protection of intellectual property rights and the continued development and availability of medicines, in particular those used to treat HIV/AIDS and other pandemics, such as tuberculosis and malaria.

- Pursuant to the TRIPS Agreement, measures may be taken to protect public health. The Declaration does not alter the requirement in Article 8 that such measures must be consistent with the provisions of the Agreement.

- The TRIPS Agreement is governed by the customary rules of interpretation of international agreements as reflected in public international law.

- Pursuant to Article 6 of the TRIPS Agreement, Members' exhaustion (parallel import) regimes may not be subject to challenge under WTO dispute settlement procedures. Ministers have not altered Members' rights and obligations under the TRIPS Agreement with respect to exhaustion of intellectual property rights. Measures that are inconsistent with TRIPS requirements concerning the exclusive right to authorize importation can be challenged under national or other international legal procedures.

- Members may define grounds for granting a compulsory license. Members remain obligated by the terms of the TRIPS Agreement with respect to their use of compulsory licensing, including the provisions that prohibit discrimination based on whether the patented product is imported or domestically produced.

- Ministers have recognized the complex issues associated with the ability of least-developed Members that lack domestic manufacturing capacity to make use of the flexibilities in the TRIPS Agreement. Ministers have directed the TRIPS Council to undertake work in this area and report to the General Council. We note that one issue to be evaluated in this process is that developers of new pharmaceutical products frequently do not seek intellectual property protection in countries that lack domestic manufacturing capacity.

Finally, in recognition of the special challenges facing the least-developed Members, Ministers adopted a U.S. proposal to direct the TRIPS Council to take the necessary action pursuant to Article 66.1 of the TRIPS Agreement to extend until 1 January 2016 the transition period under Sections 5 and 7 of Part II of the TRIPS Agreement and enforcement of those sections with respect to pharmaceutical products for least-developed country Members.

TRIPS-related WTO Dispute Settlement Cases: During the year, the United States continued to pursue consultations on enforcement issues with a number of developed countries, including

Denmark regarding its failure to provide provisional relief in civil enforcement proceedings, the European Communities, for its failure to provide TRIPS-consistent protection of geographical indications, Greece regarding its failure to take appropriate action to stop television broadcast piracy in that country, and Ireland for its failure to implement a TRIPS-consistent copyright law. As a result of Ireland's enactment of needed amendments to its copyright law, the United States and Ireland announced resolution of the WTO case brought by the United States over Ireland's failure to amend its copyright law to comply with the TRIPS Agreement on November 6, 2000, and the new law became effective on January 1, 2001. On March 20, 2001, the Danish Parliament approved legislation making civil *ex parte* searches available. The legislation was signed into law on March 28, 2001. The WTO Appellate Body decided in favor of the United States in a dispute with Canada regarding the term of protection for patents applied for prior to October 1, 1989, and recommended that Canada implement the recommendations of the dispute settlement panel within a reasonable time. As no agreement was reached regarding what was reasonable, the United States asked an arbitrator to determine the reasonable period of time for Canada to comply, and on February 28, 2001, the arbitrator determined that the deadline for compliance would be August 12, 2001. Effective July 12, 2001, Canada announced that it had enacted an amendment to its Patent Act to bring it into conformity with its obligations under the TRIPS Agreement. On March 22, 2001, the United States and Greece formally notified the WTO of the resolution of the dispute settlement case regarding television piracy. This was possible due to the sharp decline in the level of television piracy in Greece, passage of new legislation providing for the immediate closure of infringing stations, closure of several stations that had pirated U.S. films, and the issuance of the first criminal convictions for television piracy in Greece.

Also during the year, the United States continued consultations with Argentina regarding patent and data protection issues. Consultations continued with Brazil regarding a provision in its patent law providing for patent owners to manufacture their products in Brazil in order to maintain full patent rights. On June 25, 2001, the USTR announced that the United States and Brazil had agreed to transfer their disagreement over this provision from formal WTO litigation to a newly created bilateral consultative mechanism. Under the terms of the Agreement, Brazil would consult with the United States before granting any compulsory licenses and the complaint was withdrawn.

There are a number of other WTO Members that likewise appear not to be in compliance with their TRIPS obligations. The United States, for this reason, is still considering possible dispute settlement cases against India, Australia, the Dominican Republic, Egypt, Hungary, Israel, the Philippines and Uruguay. We will continue to consult with all these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible. We will also gather data on these and other countries' enforcement of their TRIPS obligations and assess the best cases for further action if consultations prove unsuccessful.

Geographical Indications: During 2000 and 2001, the Council has continued negotiations under Article 23.4 on a multilateral system for notification and registration of geographical indications for wines and spirits intended to facilitate protection of such indications. In 1999, the European Union submitted a proposal for such a system under which Members would notify the WTO of their geographical indications and other Members would have one year in which to oppose any such notified geographical indications. If not opposed, the notified geographical indications would be registered and all WTO Members would be required to provide protection as required under Article 23. The United States, Canada, Chile and Japan introduced an alternative proposal under which Members would notify their geographical indications for wines and spirits for incorporation in a register available to all

Members on the WTO website. Under this proposal, Members choosing to participate in the system would agree to consult the notifications made on the website when making decisions regarding registration of related trademarks or otherwise providing protection for geographical indications for wines and spirits. Implementation of this proposal would not place obligations on Members beyond those already provided under the TRIPS Agreement or place undue burdens on the WTO Secretariat. In 2000, the European Communities introduced a revision of its original proposal and Hungary introduced a proposal for a formal opposition system. Discussion on the proposals continued during the 2001 meetings. The United States continues to support the "collective" proposal that it sponsored along with Canada, Chile and Japan. Other delegations including Argentina, Australia, Brazil, Korea, Mexico, and New Zealand, have also expressed support for the U.S. approach. The United States will aggressively pursue additional support for its approach to the multilateral register in 2002 in light of the direction from Ministers in the Doha Ministerial Declaration to complete negotiations by the Fifth Ministerial Conference.

A review of the implementation of the application of the TRIPS provisions on geographical indications pursuant to Article 24.2 of the Agreement continues on the agenda. At each of the 2001 TRIPS Council meetings, the United States urged those Members that have not yet provided information on their regimes for the protection of geographical indications to do so. The United States also supported a proposal by New Zealand in 2000 that the Council conduct the review by addressing each article of the TRIPS Agreement covering geographical indications in light of the experience of Members. Some Members have sought to use the review to initiate negotiations to expand "enhanced" geographical indication protection under Article 23 for products other than wines and spirits. The United States, supported by several other Members, opposed efforts to initiate further negotiations in this area, noting that the Agreement provides no mandate for such negotiations.

The Doha Ministerial Declaration did not provide a mandate for such negotiations. However, the Declaration does direct the TRIPS Council to discuss issues related to extension of Article 23-level protection to geographical indications for products other than wines and spirits and report to the Trade Negotiations Committee by the end of 2002 for appropriate action.

Review of Current Exceptions to Patentability for Plants and Animals: TRIPS Article 27.3(b) authorizes Members to except plants and animals and biological processes from patenability, but not micro-organisms and non-biological and microbiological processes. In 1999, the TRIPS Council initiated a review of this Article as called for under the Agreement and, because of the interest expressed by some Members, discussion of this Article continued through 2000 and 2001. In 1999, the Secretariat prepared a synoptic table of information provided by those Members that were already obligated to implement the provisions. The synoptic table facilitated the review by permitting Members' practices to be compared easily. This portion of the review revealed that there was considerable uniformity in the practices of the Members that have implemented their obligations. During the discussion, the United States noted that the ability to patent micro-organisms and non-biological and microbiological processes, as well as plants and animals, has given rise to a whole new industry that has brought inestimable benefits in health care, agriculture, and protection of the environment in those countries providing patent protection in this area. In 2001, the United States again called for developing-country Members to provide this same information so that the Council will have a more complete picture if the discussion of this article is to continue. Regrettably, some Members have chosen not to provide such information and have raised topics that fall outside the scope of Article 27.3(b), such as the relationship between

the TRIPS Agreement and the Convention on Biological Diversity (CBD), and traditional knowledge.

While maintaining the view that these issues are beyond the scope of the review of Article 27.3(b), and that the discussion should focus on relevant information regarding Members' implementation of the provision, the United States has responded by providing two papers expressing views on these topics in 2000 and an additional paper in 2001 outlining a contract method by which those Members that are also Parties to the CBD might implement their obligations under the latter agreement. An additional paper is being prepared for the first meeting of the TRIPS Council in 2002, describing the contracts used by the National Cancer Institute when it collects plants outside the United States.

The Doha Ministerial Declaration directs the Council for TRIPS, in pursuing its work program under the review of Article 27.3(b) to examine, *inter alia*, the relationship between the TRIPS Agreement and the CBD, the protection of traditional knowledge and folklore.

Non-violation: Throughout the year, some WTO Members continued to raise questions regarding the operation of non-violation nullification and impairment complaints in the context of the TRIPS Agreement and called for the Council to define the appropriate "scope and modalities" for addressing such complaints. They argued that the possibility of such complaints, now that the moratorium on such cases has expired, created uncertainty. As in past years, the United States continued to argue that no more uncertainty was created than was the case with other WTO agreements.

The Doha Ministerial Declaration on Implementation directs the TRIPS Council to continue its examination of the scope and modalities for non-violation nullification and impairment complaints related to the TRIPS Agreement, to make recommendations to the Fifth Ministerial Conference, and, during the intervening period, not to make use of such complaints.

Electronic Commerce: The TRIPS Council continued discussing the provisions of the TRIPS Agreement most relevant to electronic commerce and explored how these provisions apply in the digital world. The United States specifically suggested that the Secretariat might usefully undertake a study of how Members are implementing TRIPS with respect to the on-line environment. The United States will continue to support discussion of the application of the TRIPS Agreement in the digital environment.

Further Reviews of the TRIPS Agreement: Article 71.1 calls for a review of the implementation of the Agreement, beginning in 2000. The Council currently is considering how the review should best be conducted in light of the Council's other work. The Doha Ministerial Declaration states that, in its work under this Article, the Council is also to consider the relationship between intellectual property and the CBD, traditional knowledge, folklore, and other relevant new developments raised by Members pursuant to Article 71.1.

Prospects for 2002

In 2002, the TRIPS Council will continue to focus on its built-in agenda as well as the additional mandates established in Doha. The TRIPS Council will issue a report to the Trade Negotiations Committee by the end of 2002 on a number of issues, including compulsory licensing, geographical indications, the relationship with the CBD, traditional knowledge and folklore as well as other relevant new developments.

While the review of developing-country Members' implementation was to have been completed in 2001, follow up of some countries was not completed and was rescheduled for 2002. Reviews yet to be completed are for: Albania, Antigua and Barbuda, Barbados, Botswana, Brazil, Brunei Darussalam, Cameroon, Congo, Côte d'Ivoire, Cuba, Egypt,

Fiji, Gabon, Ghana, Grenada, Guyana, India, Kenya, Lithuania, Malaysia, Mauritius, Namibia, Oman, Pakistan, the Philippines, Saint Kitts and Nevis, Sri Lanka, Suriname, Thailand, Tunisia, the United Arab Emirates, Uruguay, and Zimbabwe.

U.S. objectives for 2002 continue to be:

- to resolve differences through dispute settlement consultations and panels where appropriate;
- to continue its efforts to ensure full TRIPS implementation by developing-country Members;
- to participate actively in the review of formal notifications of intellectual property laws and regulations to ensure their consistency with TRIPS obligations by Members;
- to ensure that no weakening of the Agreement occurs; and
- to develop further Members' views on the relationship between the TRIPS Agreement and electronic commerce.

E. Other General Council Bodies/Activities

1. Trade Policy Review Body

Status

The Trade Policy Review Body (TPRB), a subsidiary body of the General Council, was created by the Marrakesh Agreement establishing the WTO to administer the Trade Policy Review Mechanism (TPRM). The TPRM has served as a valuable resource for improving transparency in WTO Members' trade and investment regimes and in ensuring their adherence to WTO rules. The TPRM examines national trade policies of WTO Members on a schedule designed to cover all WTO Members on a frequency determined by trade volume. The process starts with an independent report on a Member's trade policies and practices that is written by the WTO Secretariat on the basis of information provided by the subject Member. This report is accompanied by the report of the country under review. Together the reports are subsequently discussed by WTO Members in the TPRB at a session at which representatives of the country under review discuss the reports on its trade policies and practices and answer questions. The purpose of the process is to strengthen Member observance of WTO provisions and contribute to the smoother functioning of the multilateral trading system. A number of smaller countries have found the preparations for the review helpful in improving their own trade policy formulation and coordination.

The current process reflects improvements to streamline the instrument and gives it more coverage and flexibility. Reports now cover services, intellectual property rights and other issues addressed by WTO Agreements. The reports issued for the reviews are available on the WTO's web site at www.wto.org

Major Issues in 2001

During 2001, the TPRB conducted 15 policy reviews: Brunei, Cameroon, Costa Rica, Czech Republic, Gabon, Ghana, Macau, Madagascar, Malaysia, Mauritius, Mozambique, Slovak Republic, Uganda, the United States and the WTO Members of the Organization of East Caribbean States.

Five countries were reviewed for the first time, including two least-developed countries, Madagascar and Mozambique. As of December 2001, 150 reviews have been conducted since the formation of the TPR. These reviews covered 84 of the 128 Members, counting the European Union as one, and represent 83 percent of world merchandise trade. The increased importance of least-developed country reviews has led to 11 such reviews since 1998.

Despite the importance of the TPRM, questions continue to be raised about the ever-increasing

amount of resources needed to conduct the reviews. For many developing and least-developed countries, the reports represent the first comprehensive analysis of their commercial policies, laws and regulations and have implications and uses beyond the meeting of the TPRB. Some Members have used the Secretariat's Report as a national trade and investment promotion document, while others have indicated that the report has served as a basis for internal analysis of inefficiencies and overlaps in domestic laws and government agencies. For other trading partners and U.S. businesses, the reports are a dependable resource for assessing the commercial environment of WTO Members countries. In the coming year the United States will give some additional attention to the question of resources for the TPRM and potential improvements.

Reviews have emphasized the macroeconomic and structural context for trade policies, including the effects of economic and trade reforms, transparency with respect to the formulation and implementation of policy, and the current economic performance of Members under review. Another important issue has been the balance between multilateral, bilateral, regional and unilateral trade policy initiatives; in particular, the priorities given to multilateral and regional arrangements have been important systemic concerns. Closer attention has been given to the link between Members' trade policies and the implementation of WTO Agreements, focusing on Members' participation in particular Agreements, the fulfillment of notification requirements, the implementation of TRIPS, the use of antidumping measures, government procurement, state-trading, the introduction by developing-countries of customs valuation methods, the adaptation of national legislation to WTO requirements and technical assistance.

Prospects for 2002

The TPRM is an important tool for monitoring and surveillance, in addition to encouraging WTO Members to meet their WTO obligations and to maintain or expand trade liberalization measures. The program for 2002 contains provisions to conduct reviews of 17 Members: Australia, Barbados, the Dominican Republic, the European Union, Guatemala, Haiti, Hong Kong-China, India, Japan, Malawi, Mauritania, Mexico, Pakistan, Slovenia, South Africa, Venezuela, and Zambia.

2. Committee on Trade and Environment

Status

The Committee on Trade and Environment (CTE) was created by the WTO General Council on January 31, 1995 pursuant to the Marrakesh Ministerial Decision on Trade and Environment. The mandate of the CTE is to make appropriate recommendations to the Ministerial Conference as to whether, and if so what, changes are needed in the rules of the multilateral trading system to foster positive interaction between trade and environment measures and to avoid protectionist measures. At the Fourth WTO ministerial meeting in Doha, Qatar, Members agreed to an enhanced role for the CTE including serving as a forum for identifying and debating environmental issues in connection with the negotiations and increasing the focus on certain items of its agenda (see below).

Major Issues in 2001

The CTE met three times in 2001. The United States contributed to the Committee's deliberations by, *inter alia*, working to build a consensus that important trade and environmental benefits can be achieved by addressing fisheries subsidies that contribute to overfishing, and through the liberalization of trade in environmental goods and services.

Multilateral Environmental Agreements (MEAs): The CTE continued to help enhance WTO Members' understanding of the trade provisions of MEAs by holding information

exchanges with representatives from a number of MEA Secretariats, who briefed Committee Members on recent developments in their respective agreements. In June 2001, the CTE held an information session that focused on the compliance and dispute settlement provisions in MEAs and the WTO. The Secretariats of the WTO and the UN Environmental Programme (UNEP), in close cooperation with MEA Secretariats, jointly prepared a background paper for the meeting. These discussions helped inform the decision of WTO Members at Doha to begin negotiations on ways to enhance cooperation between the WTO and MEA Secretariats, and to explore further the relationship between existing WTO rules and specific MEA trade obligations, as applied among parties to the MEA in question.

Market Access: The CTE continued its work on the environmental implications of reducing or eliminating trade-distorting measures. This work reflected a broad degree of consensus that trade liberalization, in conjunction with appropriate environmental policies, can yield environmental benefits. As mentioned above, the CTE continued to discuss in depth the potential environmental benefits of reducing or eliminating fisheries subsidies. The CTE also continued discussions of the benefits of improving market access for environmental services and goods and the environmental implications of agricultural and services trade liberalization and liberalization in other sectors such as energy.

TRIPS: The CTE continued its discussions of the relationship between the TRIPS Agreement and the environment. A few Members argued for consideration of changes to the TRIPS Agreement to address perceived contradictions between the WTO and the CBD. The United States has made clear its view that there is no incompatibility between WTO Agreements and the CBD.

Relations with NGOs/Transparency/ Environmental Reviews: In 2001, the United States, joined by several other Members, continued to emphasize the need for further work to develop adequate mechanisms for involving NGOs in the work of the WTO and to improve transparency, including through providing adequate public access to documents. The United States also continued to stress the usefulness of environmental assessments in helping to assure that trade and environmental policies are mutually supportive. The United States conducts reviews of major trade agreements to which it is a party pursuant to Executive Order 13141 (1999) and encourages Members to perform reviews of their own agreements.

Prospects for 2002

As a result of new negotiations launched at Doha, the CTE is expected to play a key role on such items as enhancing cooperation between the WTO and MEA Secretariats. The Committee is also instructed to pay particular attention to the effect of environmental measures on market access, the relevant provisions of the TRIPS Agreement, and labeling requirements for environmental purposes. The Committee will prepare a report to the Fifth Ministerial Conference in 2003 with recommendations, including on potential negotiations. More generally, the CTE will serve as a forum for identifying and discussing environmental implications of the new negotiations launched at Doha, to help assure that the negotiations appropriately reflect the objective of sustainable development.

3. Committee on Trade and Development

Status

The Committee on Trade and Development (CTD) was established in 1965 to strengthen the GATT's role in the economic development of less-developed GATT Contracting Parties. In the WTO, the Committee on Trade and

Development is a subsidiary body of the General Council. The Committee provides developing countries, who comprise two-thirds of the WTO's Membership, an opportunity to focus on trade issues from a development perspective, in contrast to the other committees in the WTO structure which are responsible for the operation and implementation of particular Agreements. Among subjects the Committee has discussed are the benefits of trade liberalization to development prospects, the role of technical assistance and capacity building in this effort and electronic commerce, pursuant to the 1998 Ministerial decision on electronic commerce.

Major Issues in 2001

The Committee held five formal meetings and two seminars in 2001. The Committee's work focused on the following areas: review of the special provisions in the Multilateral Trading Agreements and related Ministerial Decisions in favor of developing-country Members (in particular least-developed countries); participation of developing countries in world trade, implementation of WTO agreements, technical cooperation and training, concerns and problems of small economies, development dimensions of electronic commerce, market access for least-developed countries, and the generalized system of preferences. The Committee seminars focused on technology, trade and development, and government facilitation of electronic commerce for development.

The Committee also discussed the nature of the WTO's role in technical assistance and how to collaborate effectively with other international and national agencies in providing and monitoring such assistance. At the Committee meeting in November, the United States submitted a report on U.S. Government initiatives to build trade-related capacity in developing and transition countries. The report provides details on the $1.3 billion worth of trade-related capacity building the United States has provided during the last three years. The report can be viewed at http://www.usaid.gov/economic_growth/trade report. (The U.S. Government also has developed a trade-related capacity building database available online at http://qesdb.cdie.org/tcb/index.html.)

Sub-Committee on Least-Developed Countries: The Committee on Trade and Development has a sub-committee that focuses on the least-developed countries. At the 1996 Singapore Ministerial Meeting, Members agreed to a Plan of Action to foster an integrated approach to trade-related technical assistance activities for the least-developed countries and to improve their overall capacity to respond to the challenges and opportunities offered by the trading system. The result was the Integrated Framework for Trade-related Technical Assistance ("Integrated Framework") that seeks to coordinate the trade assistance programs of six core international organizations (the International Monetary Fund, the International Trade Center, the United Nations Conference on Trade and Development, the United Nations Development Program, the World Bank and the WTO). In addition, least-developed countries can invite other multilateral and bilateral development partners to participate in the Integrated Framework process. In 2001, the Sub-Committee on Least-Developed Countries of the Committee on Trade and Development continued to focus its work on the Integrated Framework, communicating with and providing views to the Inter-Agency Working Group which includes representatives from the six core international organizations on the arrangements for the Integrated Framework. In January 2001, the Sub-Committee held a seminar on the Policy Relevance of Mainstreaming Trade into Country Development Strategies. In February, the Sub-Committee adopted a proposal for an Integrated Framework pilot scheme and in May the Sub-Committee was informed of the selection of the first three Integrated Framework pilot project countries: Madagascar, Mauritania, and Cambodia.

Prospects for 2002

The Committee on Trade and Development, which is scheduled to meet four times in 2002, will continue its function as the forum for discussion of development issues within the WTO. Particular emphasis is likely to be placed on special and differential treatment, the participation of developing countries in the multilateral trading system, electronic commerce, technical cooperation, and the UN Conference on Financing for Development. The Committee will host a seminar on electronic commerce in April.

The Sub-Committee on Least-Developed Countries will meet three times in 2002. It will continue to focus on the special needs of and opportunities available to the least-developed countries and the Integrated Framework. This year, the Sub-Committee will hold two different seminars on the Integrated Framework and WTO Trade Policy Reviews.

4. Committee on Balance of Payments Restrictions

Status

WTO rules require any Member imposing restrictions for balance of payments purposes to consult regularly with the Balance of Payments (BOP) Committee to determine whether the use of restrictive measures is necessary or desirable to address its balance of payments difficulties. Full consultations involve a complete examination of a country's trade restrictions and balance of payments situation, while simplified consultations provide more general reviews. Full consultations are held when restrictive measures are introduced or modified, or at the request of a Member in view of improvements in the balance of payments. The Uruguay Round results strengthened substantially the provisions on balance of payments. The BOP Committee works closely with the International Monetary Fund in conducting its BOP consultations.

Major Issues in 2001

Since entry-into-force of the WTO on January 1, 1995, the WTO BOP Committee has demonstrated that the new WTO rules provide Members additional, effective tools to enforce obligations under the BOP provisions. At its December 2000 meeting, the Committee approved a phase-out plan submitted by Bangladesh to eliminate all of its balance-of-payments restraints on certain textiles in four tranches by January 2005. In July 2001, the Committee held additional consultations with Bangladesh. In consultations in December 2001, Bangladesh informed the Committee that it would be willing to eliminate its restrictions on the import of sugar by July 1, 2005, and would try to justify its ban on non-iodized salt under Article XX. For the remaining three products subject to import restrictions, Bangladesh indicated that it would be submitting a notification in the near future on how it intends to deal with these products. In January and February 2001 Pakistan, notified the BOP Committee that it had removed the restrictions on netting fabrics, special woven fabrics, knitted clothing and non-knitted clothing in accordance with the second tranche of its phase-out plan. In late December 2001, BOP Committee announced that Pakistan had informed it that it had removed the remaining import restrictions on woven fabrics and bed linens, fully implementing its balance of payments restrictions phase-out plan.

Prospects for 2002

The Committee will consult with Bangladesh in January 2002 and as necessary with other countries maintaining BOP-related restrictions during the year. Additionally, should other Members resort to new BOP measures, the WTO provides for a program of rigorous consultation with the Committee. The United States expects the Committee to continue to see that WTO BOP provisions are used as intended, to address legitimate, serious BOP problems through the imposition of temporary, price-based measures. The Committee will also

continue to rely upon its close cooperation with the IMF.

5. Committee on Budget, Finance, and Administration

Status

WTO Members are responsible for establishing and approving the budget for the WTO Secretariat via the Budget Committee. Although the Committee meets throughout the year to address the financial requirements of the organization, the formal process to approve the budget for the upcoming year begins in the fall when the Secretariat provides to Members the financial data from the previous year and forecasts the financial needs for the upcoming year. The United States is an active participant in the Budget Committee.

The WTO annual budget is reviewed by the Committee and approved by the WTO General Council. It is the practice in the WTO to take decisions on budgetary issues by consensus. For the 2002 budget, the U.S. assessment rate is 15.723 percent of the total assessment, or Swiss Francs (CHF) 22,342,383 (about $14 million). Details on the WTO's budget required by Section 124 of the URAA are provided in Annex II.

Major Issues in 2001

In 2001, the launch of the new round of negotiations in Doha and the capacity building needs of developing countries were the major issues facing the Budget Committee. Other issues of significance in 2001 included implementing a new performance-based pay system, reviewing a Swiss proposal to provide additional facilities for the WTO, and the first contribution received under the WTO's new guidelines governing the acceptance of contributions from non-governmental organizations.

Agreed Budget for 2002: After considerable discussion to ensure that the organization would be able to meet the technical assistance and capacity building needs of developing countries agreed during the launch of the new round at Doha, the Committee proposed, and the General Council approved, a 2002 budget for the WTO Secretariat and Appellate Body of CHF 143,129,850 (approximately $88 million).

The discussions within the Budget Committee focused primarily on meeting the call in the Doha Ministerial declaration for stable and predictable funding for trade capacity-related technical assistance and cooperative programs for developing countries. Previously, there had been significant debate within the Committee over whether the resources needed to meet the technical assistance needs of developing-country Members should be brought onto the regular budget, funded by Members' contributions. In 2001, the United States and a number of other Members opposed funding all of the technical assistance and capacity building expenses from the regular budget for both systemic and budgetary reasons. (Historically, a portion of the staffing for technical assistance programs was provided by the WTO Secretariat out of the budget. The variable expenses of these programs–mostly for facilities, interpretation and non-Secretariat travel–are funded primarily by donations of individual developed countries, including contributions by the United States of $600,000 in November 2000 and $1.0 million in May 2001).

The agreed 2002 budget package provides for increased technical assistance and additional financing for the International Trade Center. The budget resolution also creates the Doha Development Agenda Trust Fund, which will be financed by voluntary contributions. WTO Members agreed to double the number of highly acclaimed WTO training courses, which educate developing countries' officials on how to participate in the work of the WTO, including how to meet their trade obligations. The training program is funded out of the regular WTO budget. Another element of the budget package will provide technical assistance for developing countries that do not have offices in

Geneva to represent them at the World Trade Organization. These efforts will assist countries that have the greatest difficulty in participating in WTO activities.

The Doha Development Agenda Trust Fund, with a target endowment level of CHF 15,000,000 (about $9 million), will allow the WTO to meet the trade capacity development commitments in the Doha Declaration and will absorb previous trust funds, including the Technical Assistance Global Trust Fund. A pledging conference in the first quarter of 2002 will kick off efforts to reach the target endowment for the Doha Fund, which will have a CHF 1,000,000 buffer account to ensure that programs will not be disrupted due to temporary shortfalls in the receipt of pledged contributions. The Doha Fund will operate with specific targets tied to identified benchmarks and will be jointly supervised by the Committee on Trade and Development and the Budget Committee. For the year 2002, it was agreed that up to CHF 480,000 from the new trust fund can be used to fund a symposium with non-governmental organizations (NGOs).

WTO Members agreed to increase the staffing of the organization by eight people to address higher workloads, including in several areas related to the launch of the new round. The positions are to be allocated in the following divisions: three in the Training Institute, one in Economic Research and Analysis, one in Statistics, one in the Human Resources, one in Trade Policy Review, and one to be determined. The WTO Secretariat will also be redeploying five positions within the organization.

As a result of the budget agreement, the United States assessment for 2002 is CHF 22,342,383 (about $14 million). The U.S. contribution accounts for 15.723 percent of the total assessments of WTO Members, which are based on the share of WTO Members' trade in goods, services, and intellectual property. In 2001, the Committee adopted a new methodology based on the average trade of each Member over a five-year period. To assure uniformity, the fifth year corresponds to the year that is two years before the particular budget year. Therefore, assessments for 2002 are based on average trade in the years 1996-2000, inclusive. At the end of 2001, the accumulated arrears of the United States to the WTO amounted to CHF 3,205,232 (nearly two million dollars).

Performance Award Program: In 2001, the WTO developed performance benchmarks and trained supervisors in performance assessment to implement the performance-based pay system introduced in 2000 at the insistence of the United States and a number of other countries. The performance-based system replaced the practice of staff receiving salary increases based solely on the length of time that they have served. Salary increases are now granted only if an employee's performance had been evaluated as satisfactory and bonuses reward outstanding performance.

Building Facilities: The Budget Committee considered a building proposal from the Swiss Government intended to accommodate the current needs of the WTO Secretariat, which exceeds the space available in the WTO's main building, and to take into account the future needs of the WTO and its Appellate Body. The proposal allows for the WTO to finance design studies and construction of the building with a loan of CHF 50,000,000 (close to $31 million) payable over 50 years. The Government of Switzerland would pay the interest on the loan and the Canton of Geneva would pay for the rental of the ground the building would occupy until 2059, at which time the WTO could either purchase the land, negotiate an extension of the agreement, or sell the building. Construction could begin in 2005 and be completed in 2007-2008. A final decision will need to be made by the General Council at some time in the future. However, the Budget Committee recommended, and the General Council agreed, to accept Switzerland's proposal in principle so that the Swiss authorities can hold the necessary land and work with the WTO to develop the additional plans and analysis that will be necessary to take a final decision.

Prospects for 2002

In 2002, the Budget Committee will work closely with the Committee on Trade and Development to develop a program of technical cooperation for 2003 and recommend to the General Council a target level of financing from the Doha Development Agenda Trust Fund that will be necessary to fund these efforts. Additional consideration will also need to be given to the Swiss proposal on additional facilities for the WTO. The Budget Committee has also agreed to look closely at an independent consultant's report on staffing levels and potential reorganization of the WTO Secretariat, which was completed at the very end of 2001 and therefore not able to be fully reviewed by the Committee. Further work will be accomplished in the area of performance-based budgeting.

6. Committee on Regional Trade Agreements

Status

The Committee on Regional Trade Agreements (CRTA), a subsidiary body of the General Council, was established in early 1996 as a central body to oversee all regional agreements to which Members are party. The CRTA is charged with conducting reviews of individual agreements, seeking ways to facilitate and improve the review process, implementing the biennial reporting requirements established by the Uruguay Round agreements, and considering the systemic implications of such agreements and regional initiatives on the multilateral trading system. Prior to 1996, these reviews were typically conducted by a "working party" formed to review a specific agreement.

The WTO addresses regional trade agreements in more than one agreement. In the GATT 1947, Article XXIV was the principal provision governing Free Trade Areas (FTAs), Customs Unions (CUs), and interim agreements leading to an FTA or CU. Additionally, the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly known as the "Enabling Clause," provides a basis for less comprehensive agreements between or among developing countries. The Uruguay Round added two more provisions: Article V of the General Agreement on Trade in Services (GATS), which governs the services-related aspects of FTAs and CUs; and the Understanding on the Interpretation of Article XXIV, which clarifies and enhances the requirements of GATT Article XXIV.

FTAs and CUs, both exceptions to the principle of MFN treatment, are allowed in the WTO if certain requirements are met. First, substantially all of the trade between the parties to the agreement must be covered by the agreement, *i.e.*, tariffs and other restrictions on trade must be eliminated on substantially all trade. Second, the incidence of duties and other restrictions of commerce applied to third countries upon the formation of the FTA or CU must not, on the whole, be higher or more restrictive than was the case before the agreement. Finally, while interim agreements leading to FTAs or CUs are permissible, transition periods to full FTAs or CUs can exceed ten years only in exceptional cases. With respect to the formation of a CU, the parties must notify WTO Members and begin negotiations to compensate other Members for exceeding their WTO bindings with market access concessions. A similar compensation agreement exists for services.

Major Issues in 2001

Examination of Reports: The Committee held three formal meetings during 2001. The Committee examined 107 agreements, referring 94 of them to the Council on Trade in Goods and 13 agreements to the Council for Trade in Services.[16] The Committee has a backlog of

[16] A list of all regional trade agreements notified to the GATT/WTO and in force is included in the appendix to this chapter.

draft reports, for which Members do not agree on the nature of appropriate conclusions. Throughout 2001, the Committee held extensive consultations in attempt to resolve Members' differences. At the same time, the Committee considered 20 biennial reports on regional agreements notified under the Article XXIV of GATT 1947.

Systemic Issues: At the direction of the CRTA, the Secretariat undertook two horizontal surveys of crosscutting measures to assist the Committee in its understanding of the impact of regional trade agreements on the multilateral trading system. The two studies, on product coverage and rules of origin, will be discussed by the Committee in 2002.

Prospects for 2002

The Doha Declaration calls for clarifying and improving rules for regional trade agreements. The Committee may play a role in these new negotiations, the exact structure of which will be decided in early 2002. In the meantime, the Committee will continue to address all aspects of its mandate, in particular reviewing the new regional trade agreements being notified to the WTO and attempting to clear the backlog of reports. Further discussions on improving the review process and the systemic effects of regional agreements will likely be major issues in the coming year, particularly in the context of the horizontal studies already undertaken by the Secretariat. The Committee also plans to hold a seminar engaging the academic community in a discussion of regionalism in early spring in order to increase its understanding of the impact of regional trade agreements on the multilateral trading system.

7. Accessions to the World Trade Organization

Status

The year 2001 saw the completion of over fifteen years of negotiations for the WTO Membership of the People's Republic of China. Three other long-term accession applicants, Lithuania, Moldova, and Taiwan (officially known in the WTO as the Separate Customs Territory of Taiwan, Pengu, Kinmen, and Matsu, or Chinese Taipei) also completed the accession process in 2001, bringing total WTO Membership to 144 as of January 1, 2002. In addition, there are twenty-eight other accession applicants with established Working Parties, and Ethiopia and Sao Tome and Principe participate as observers.

Countries and separate customs territories seeking to join the WTO must negotiate the terms of their accession with current Members, as provided for in Article XII of the WTO Agreement. After accepting an application, the WTO General Council establishes a Working Party to review information on the applicant's trade regime and conduct the negotiations. Accession negotiations are time consuming and technically complex. They involve a detailed review of an applicant's entire trade regime by the Working Party. Applicants must be prepared to make legislative changes to implement WTO institutional and regulatory requirements, to eliminate existing WTO-inconsistent measures, and to make specific commitments on market access for goods and services. It is widely recognized that the accession process, with its emphasis on implementation of WTO provisions and the establishment of stable and predictable market access for goods and services, provides a proven framework for adoption of policies and practices that encourage growth, development, and investment. The accession process strengthens the international trading system by ensuring that new Members understand and can implement WTO rules from the outset, and it offers current Members the opportunity to secure expanded market access opportunities and to address outstanding trade issues in a multilateral context.

The terms of accession developed with Working Party Members in these bilateral and multilateral negotiations are recorded in an accession "protocol package" consisting of a

Working Party report and Protocol of Accession, consolidated schedules of specific commitments on market access for imported goods and foreign service suppliers, and agriculture schedules that contain commitments on export subsidies and domestic supports. The Working Party adopts the completed protocol package containing the negotiated terms of accession and transmits it with its recommendation to the General Council or Ministerial Conference for approval. After General Council approval, accession applicants normally submit the package to their domestic authorities for ratification. Thirty days after the instrument of ratification is received in Geneva, accession to the WTO occurs.

At the end of 2001, thirty-one applications for WTO Membership were pending, up from 29 at the beginning of the year, and Membership in the WTO remains an economic, and political, priority for a number of governments. In addition to the four new Members whose parliaments ratified the results of their negotiations, Vanuatu's Working Party adopted the terms of its accession in October, the first time since the WTO was established that a least-developed country (LDC) had reached this stage. The package awaits acceptance by Vanuatu and the General Council to complete the process.

The General Council accepted new accession applications from The Bahamas, Tajikistan, and Yugoslavia during 2001. Applications from Syria and Libya were tabled late in the year. Of the twenty-eight applicants with Working Parties established, all but seven have submitted initial descriptions of their trade regimes, in effect activating the accession process. Azerbaijan, Cambodia, Samoa, Tonga, Sudan and Uzbekistan all provided comprehensive information on their trade regimes, and Cambodia and Tonga initiated negotiations with their first Working Party meetings. Working Party meetings and/or bilateral market access negotiations were also held with Armenia, Belarus, China, Kazakhstan, Macedonia, Moldova, Russia, Tonga, Ukraine, Taiwan, and Vanuatu. The chart included in the Annex to this section reports the current status of each accession negotiation.

Major Issues in 2001

Intensive work to complete the accessions of China, Chinese Taipei, and Vanuatu and to make progress on those of Russia and Macedonia, took up most of the attention given by WTO Members to individual accessions in 2001.[17] The accession negotiations of Ukraine, Kazakhstan, and Armenia also intensified during 2001, either in terms of market access negotiations on goods and services or in terms of legislative implementation.

Members also attempted to respond to criticism leveled by the informal group of developing countries during 1999 and 2000 that the accession process was too burdensome for some applicants. During 2001, they sought ways to simplify and streamline the accession process, especially for the nine least-developed country (LDC) applicants with extremely low levels of income and economic development, and others, such as WTO observers Ethiopia and Sao Tome and Principe, that might apply for Membership in the future. Members generally recognized the unique problems facing LDCs applying for WTO accession, *i.e.*, lack of human resources to conduct the negotiations, infrastructure deficiencies, and a general lack of capacity to implement WTO provisions without technical assistance from the WTO and its Members.

At the time the accession package of Moldova was approved, the United States invoked the non-application provisions of the WTO Agreement contained in Article XIII with respect to that country, bringing to five the number of times since the establishment of the WTO in 1995 that this step has been

[17] For further information on the results of the WTO accession negotiations with China and Taiwan to the WTO, please consult Chapter IV.

necessary.[18] Invoking Article XIII was necessary because the United States must retain the right to withdraw "normal trade relations (NTR)" (called "most-favored-nation" treatment in the WTO) for WTO Members that receive NTR with the United States subject to the provisions of the "Jackson-Vanik" clause and the other requirements of Title IV of the Trade Act of 1974.[19] In such cases, the United States and the other country do not have "WTO relations" which, among other limitations, prevents the United States from bringing a WTO dispute based on a violation of the WTO or the country's commitments in its accession package.

Prospects for 2002

As the new round of multilateral negotiations gets underway, work in the WTO will increasingly be focused in that direction, and day-to-day work in the organization and dispute settlement cases will also require WTO Members' attention. As a consequence, in addition to continuing efforts to promote progress in the accessions of LDCs, emphasis will center on accession applicants that demonstrate a willingness to implement WTO provisions and reach agreement with WTO Members on market access issues. U.S. representatives will remain key players in all accession meetings, as the negotiations provide opportunities to expand market access for U.S. exports, to encourage trade liberalization in developing and transforming economies, and to support a high standard of implementation of WTO provisions by both new and current Members. The United States has also pledged to increase its efforts to promote trade capacity building among least-developed countries, including those seeking accession to the WTO.

Armenia, Macedonia, Russia, and Vanuatu are the most advanced in the accession process. In addition, Algeria and Kazakstan have resumed active negotiations after a lengthy hiatus, declaring WTO accession a priority for their countries, and will press to intensify negotiations during 2002. Six additional applicants at the very beginning of the accession process, including three additional least-developed countries, have circulated initial documentation and will expect to launch Working Party reviews of their trade regimes this year. Finally, the expectation remains that additional countries currently outside the WTO system will seek to initiate accession negotiations.

8. Working Group on Trade and Competition Policy

Status

In 2002, the WTO Working Group on the Interaction between Trade and Competition Policy (Working Group) enters its sixth year of work under the oversight of the WTO General Council. The Working Group was set up by WTO Trade Ministers at their first Ministerial Conference in Singapore in December 1996. Its mandate was to "study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework." In December 1998, the General Council authorized the Working Group

[18] The United States invoked nonapplication of the WTO when Romania became an original Member in 1995, and when the accession packages of Mongolia, the Kyrgyz Republic, and Georgia were approved by the WTO General Council in 1996, 1998, and 1999, respectively. Congress subsequently authorized the President to grant them permanent NTR, and the United States withdrew its invocation of non-application in the WTO for these countries.

[19] In addition to Moldova, eight of the remaining 28 WTO accession applicants with active Working Parties are covered by Title IV. They are: Armenia, Azerbaijan, Belarus, Kazakhstan, Russia, Ukraine, Uzbekistan, and Vietnam. The Administration recently proposed that Armenia, Azerbaijan, Kazakhstan, Moldova, Russia, Ukraine, and Uzbekistan be granted permanent NTR. For further information on this issue, please consult Chapter IV. For further information on granting permanent NTR to China, please consult Chapter IV.

to continue its work on the basis of a more focused framework of issues. This framework continued to serve as the basis of the Working Group's work in 2001.

In Paragraph 23 of the November 2001 Doha Ministerial Declaration, the Ministers agreed that "negotiations regarding competition policy would take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations." The Ministerial Declaration provides that further work in the Working Group up to the Fifth Session will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The Ministerial Declaration also recognized the needs of developing and least-developed countries for technical assistance and capacity building in this area, and pledged to work in cooperation with other intergovernmental organizations, including UNCTAD, to provide assistance in response to these needs.

Major Issues in 2001

The Working Group held three meetings in 2001, in March, July and September. The Working Group continued to organize its work on the basis of written contributions from Members, supplemented by discussion and commentary offered by delegations at the meetings and, where requested, factual information and analysis from the WTO Secretariat and observer organizations such as the OECD, the World Bank and UNCTAD. As noted, in December 1998, the General Council set a focused framework for study by the Working Group, which continued to set the parameters of the Working Group's work in 2001. These parameters were: (i) the relevance of fundamental WTO principles of national treatment, transparency and most-favored-nation treatment to competition policy, and vice-versa; (ii) approaches to promoting cooperation and communication among Members, including in the field of technical cooperation; and (iii) the contribution of competition policy to achieving the objectives of the WTO, including the promotion of international trade.

Beyond these three broad areas of focus, the Working Group also took account of some suggestions developed by the Working Group Chairman, Professor Frédéric Jenny of France, in the course of informal consultations with Members. These suggestions were that the Working Group:

- continue placing emphasis on addressing the concerns that had been expressed by some developing-country Members regarding both the general impact of implementing competition policy on their national economies and the particular implications that a multilateral framework on competition policy might have for development-related policies and programs;

- continue exploring the implications, modalities and potential benefits of enhanced international cooperation, including in the WTO, in regard to the subject-matter of trade and competition policy; and

- continue focusing on the issue of capacity building in the area of competition law and policy.

Twenty written submissions were contributed by a total of 16 Members (counting the EU and its 15 Member States as one contributor). These submissions ranged across the three areas of focus set by the General Council, but the majority of them addressed issues arising under the rubric of "approaches to promoting cooperation and communication among Members, including in the field of technical cooperation." The United States made two submissions to the Working Group in 2001: the

first (which had previously circulated as an advance copy for the Working Group's meeting in October 2000) addressed "The Role of Competition Advocacy," while the second addressed "Administering a Competition Law and Policy: The Mechanics of Setting and Pursuing Policy Goals with Finite Resources."

Prospects for 2002

The work of the Working Group in 2002 will focus on the clarification of the topics specified in the Ministerial Declaration (*i.e.*, core principles, hardcore cartels, voluntary cooperation, and capacity building). Meetings of the Working Group are already scheduled for March and July, and a further meeting in September also has been discussed.

9. Working Group on Transparency in Government Procurement

Status

Building on the progress to date in the Working Group on Government Procurement, the Doha Ministerial Declaration calls for decisions to be taken at the Fifth WTO Ministerial Conference on the modalities for negotiations on a potential Agreement on Transparency in Government Procurement, and for negotiations to begin on that basis.

Continued progress toward a multilateral Agreement on Transparency in Government Procurement is an important element of the United States' longstanding efforts to bring all WTO Members' procurement markets within the scope of the international rules-based trading system. This work also contributes to broader U.S. initiatives aimed at promoting the international rule of law, combating international bribery and corruption, and supporting the good governance practices that many WTO Members have adopted as part of their overall structural reform programs.

Major Issues in 2001

The Working Group has made significant progress in identifying many of the key substantive elements of a potential Agreement on Transparency in Government Procurement, including:

- Publication of information regarding the regulatory framework for procurement, including relevant laws, regulations and administrative guidelines;
- Publication of information regarding opportunities for participation in government procurement, including notices of future procurements;
- Clear specification in tender documents of evaluation criteria for award of contracts;
- Availability to suppliers of information on contracts that have been awarded; and
- Availability of mechanisms to challenge contract awards and other procurement decisions.

The Working Group's discussions have confirmed that a wide range of WTO Members consider these elements to be fundamental to an efficient and accountable procurement system and, accordingly, already incorporate these elements, as appropriate, in their existing procurement laws, regulations and practices.

In 2001, discussions in the Working Group focused on the important benefits to all WTO Members of concluding a multilateral Agreement in this area. Many delegations stressed that incorporating predictable standards of transparency in government procurement into the rules-based international trading system would not only facilitate commercial development and the integration of all Member economies into the global trading system, but could also contribute to Members' efforts to ensure the most efficient possible use of scarce public resources. Some developing-country delegations noted that computer-based information and communications technologies

can provide a cost-effective way for all governments to achieve their transparency objectives.

Prospects for 2002

Pursuant to the Doha Ministerial Declaration, the United States will work with other WTO Members to push for progress on a number of key issues relating to modalities for negotiations on an Agreement on Transparency in Government Procurement, including: 1) potential capacity building needs related to the substance of the negotiations; 2) the appropriate scope and coverage of an Agreement; and 3) the appropriate application of WTO dispute settlement procedures to such an Agreement.

10. Working Group on Trade and Investment

Status

The Working Group on Trade and Investment (WGTI), which was originally established by the Singapore Ministerial Declaration in 1996, provides a multilateral forum for the consideration of investment liberalization and international investment agreements and their relationship to trade and economic development. The WTO General Council oversees the work of the WGTI and has approved an extension of its initial two-year mandate until the next Ministerial in 2003. During this time, the WGTI has been tasked to focus on several investment issues including scope and definition, transparency, non-discrimination, development provisions, exceptions and dispute settlement. Following this period, negotiations will occur "on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations."

The WGTI provides an opportunity for the United States and other countries to present the benefits they derive from open investment policies and programs and to advance international understanding of these benefits. It is also a valuable forum in which to dispel misconceptions about investment liberalization, such as the concern in some developing countries that foreign investment marginalizes domestic firms. To date, the group has analyzed the full range of investment agreement models currently in use, and considered the implications of the differences. The group assessed the advantages and disadvantages of the variety of approaches, including as they affected economic development. The United States believes that the WGTI's work significantly raises other countries' understanding of investment rules.

Major Issues in 2001

The WGTI met three times in 2001. Drawing from the checklist of issues developed during the initial two years of its work, and relying on written submissions from Members, the WTO Secretariat and multilateral bodies such as the OECD and UNCTAD, the WGTI reviewed three broad subject areas. The first was the implications of trade and investment for facilitating economic development and growth, including the following subtopics: the relationship between balance of payments and FDI with a focus on mergers and acquisitions, portfolio investment, and the advantages of multilateral investment rules. The second topic was the economic relationship between trade and investment, where investment incentives and FDI flows and technology transfer were addressed. Finally, the Working Group took stock of and analyzed existing international instruments and activities regarding trade and investment, focusing on investment seminars outside of the WTO.

Prospects for 2002

With a renewed mandate for the WGTI, and the prospects of negotiations to begin following the next Ministerial, it is expected that the work in this body will take on renewed importance. Members looking to include specific topics on the negotiating agenda will need to begin developing a consensus, given that the content of negotiations remains a decision to be made by Ministers in 2003.

11. Trade Facilitation

Status

The 1996 Singapore Ministerial Declaration requested the Council for Trade in Goods "to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area." The Council continued its work under this mandate in 2001, leading up to the Doha Ministerial, where an ambitious and focused program was established for new work to be undertaken, leading up to the Fifth Ministerial in 2003. At Doha, it was agreed that negotiations on Trade Facilitation will take place after the Fifth Ministerial, based upon a decision to be taken at that Ministerial on modalities of negotiations.

Major Issues in 2001

In 2001, the Council for Trade in Goods met several times in informal session, continuing its analysis of various 'national experience' submissions, and exploring potential current "gaps" within the parameters of relevant WTO rules. Emerging in 2001 was a significant level of interest by many Members to add to the Trade Facilitation agenda those issues pertaining to the transit of goods through territories– a matter of particular importance to several 'land-locked' countries. In addition, a key event in 2001 was a comprehensive two-day "WTO Workshop on Technical Assistance and Capacity Building in Trade Facilitation," featuring speakers from both donor and recipient countries, international organizations actively involved in trade capacity building, and the private sector.

As the year progressed, there continued to be some resistance exhibited on the part of certain developing-country Members toward commencing negotiations on Trade Facilitation. However, many developing countries joined the United States and other Members in supporting a view that the development of a rules-based environment for conducting trade transactions would be an important element for securing continued growth in the economic output of all WTO Members. There was no disagreement among Members that systemic reforms related to increased transparency and efficiency in the conduct of border transactions would diminish corruption, while providing an additional benefit of enhancing administrative capabilities that ensure effective compliance with customs-related requirements or laws concerning health, safety, and the environment. For the United States and many of its key trading partners, small and medium size enterprises (SMEs) have become important stakeholders in advancing WTO work in the area of Trade Facilitation. SMEs are especially poised to take advantage of opportunities provided by today's instant communications and ever-improving efficiencies in the movement of physical goods, while at the same time are particularly disadvantaged when border procedures are opaque and overly burdensome.

Prospects for 2002

As reflected in the Doha Declaration, the United States and all other Members are challenged in the area of Trade Facilitation to move beyond the previous Singapore Ministerial analytical mandate and undertake an ambitious work agenda leading up to the Fifth Ministerial. The Council on Trade in Goods will not only review, but also undertake as appropriate to "clarify and improve" relevant aspects of GATT Article V ("Freedom of Transit"), GATT Article VIII ("Fees and Formalities Connected with Importation and Exportation"), and GATT Article X ("Publication and Administration of Trade Regulations"). At the same time, Members will identify trade facilitation needs and priorities of Members, while concurrently taking up the challenge of ensuring adequate technical assistance and support for capacity building in this area. The United States and other leading Members will move aggressively toward advancing the Doha Trade Facilitation agenda, in order to ensure that the work is effectively positioned at the Fifth Ministerial for

completing negotiations in the three-year time frame of the overall Doha negotiating work program.

The United States views work in this area as ultimately leading to one of the most important systemic negotiations to be undertaken by the WTO. The future WTO negotiations in the area of Trade Facilitation are a "win-win" opportunity, given the important linkages between a rules-based trade transaction environment and a stable economic infrastructure. The United States will continue to advance ongoing complementary initiatives involving existing Agreements, such as with regard to implementation of the WTO Agreement on Customs Valuation. The United States will also be working with key Members to ensure the technical assistance is demand-driven and is effective in bringing about concrete measurable results that will translate into increased trade and investment opportunities for all Members.

F. Plurilateral Agreements

1. Committee on the Expansion of Trade in Information Technology Products

Status

The landmark agreement to eliminate tariffs by January 1, 2000 on a wide range of information technology products, generally known as the Information Technology Agreement, or ITA, was concluded at the WTO's first Ministerial Conference at Singapore in December 1996. The ITA has 57 participants representing over 95 percent of trade in the $600 billion-plus global market for information technology products. [20] The agreement covers computers and computer equipment, semiconductors and integrated circuits, computer software products, set-top boxes, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments.

Major Issues in 2001

The WTO Committee of ITA Participants held four formal meetings in 2001, during which the Committee reviewed implementation status. Although developed country participants implemented duty-free treatment for these products on January 1, 2000, some limited staging of tariff reductions for individual products up to 2005 for developing countries was granted on a country-by-country basis.

Pursuant to the provisions of the Singapore Ministerial declaration establishing the ITA, the Committee continued its work to address divergent classification of information technology products. Building on the work done in 1999 and 2000, substantial progress was made in 2001 on reaching agreed classifications for many products. A list of products where agreement was not possible was forwarded to the World Customs Organization for their consideration.

As a result of the approval of the Non-Tariff Measures (NTM) Work Program in late 2000, the Committee began work in 2001 by identifying NTMs which impede trade in ITA products. On this issue there have been nine submissions from participants to date. The Committee is in the process of examining the economic and development impact of such measures on trade in ITA products and the benefits which would accrue to participants

[20] ITA participants are: Albania, Australia, Bulgaria, Canada, Costa Rica, Croatia, Cyprus, Czech Republic, El Salvador, Estonia, European Communities (on behalf of 15 Member States), Georgia, Hong Kong China, Iceland, India, Indonesia, Israel, Japan, Jordan, Republic of Korea, Krygyz Republic, Latvia, Lithuania, Macau, Malaysia, Mauritius, Moldova, New Zealand, Norway, Oman, Panama, Philippines, Poland, Romania, Singapore, Slovak Republic, Slovenia, Switzerland and Liechtenstein, Taiwan, Thailand, Turkey, and the United States. China and Armenia have indicated their intention to join the ITA.

from addressing their undue trade-distorting effects.

Prospects for 2002

The Committee's decision to establish a work program on non-tariff measures effectively demonstrates how the WTO provides a dynamic mechanism that is responsive to the ever-changing nature of the information technology sector. ITA participants have already identified a number of non-tariff measures that act as unnecessary impediments to trade. The Committee intends to bring together industry representatives and government regulators in 2002 to consider how these impediments can be removed.

Throughout 2002 the Committee will continue to undertake its mandated work, including reviewing possibilities for product expansion along with addressing further technical classification issues. In addition, the Committee will continue to monitor implementation of the Agreement, including undertaking any necessary clarifications.

2. Committee on Government Procurement

Status

The WTO Government Procurement Agreement (GPA) is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that specifically signed it in Marrakesh or that have subsequently acceded to it. WTO Members are not required to join the GPA, but the United States strongly encourages all WTO Members to participate in this important agreement. The current membership is: the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom), the Netherlands with respect to Aruba, Canada, Hong Kong China, Iceland, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore and Switzerland. Iceland acceded to the GPA in April 2001. Albania, Bulgaria, Chinese Taipei, Estonia, Jordan, the Kyrgyz Republic, Latvia, Oman, Panama, and Slovenia are in the process of negotiating GPA accession.

Major Issues in 2001

In Article XXIV:7 of the GPA, the Parties agreed to conduct further negotiations with a view to improving both the text of the Agreement and its market access coverage. The Parties have since agreed that, as part of the review, the Committee should take into account the objective of promoting expanded membership of the GPA by making it more accessible to non-members.

With these objectives in mind, the United States has taken the lead in advocating significant streamlining of some of the GPA's procedural requirements, while continuing to ensure full transparency and predictable market access. Much of the existing text of the GPA was developed in the late 1970s, during the negotiations on the original GATT Government Procurement Code. As the current review of the Agreement has proceeded, the Committee has become aware that the GPA text should be carefully analyzed in view of the ongoing modernization of the Parties' procurement systems and technologies.

As provided for in the GPA, the Committee continued the process of monitoring members' implementing legislation. In 2001, it completed its review of the implementing legislation of Canada, Hong Kong China, Israel, Japan, Liechtenstein, Norway, Singapore and the United States.

Prospects for 2002

In 2002, the Committee will continue its review and analysis of the text of the GPA, focusing on proposals by the United States and other Parties aimed at "streamlining" the Agreement's

procedural requirements. It will also consider proposals that have been made with respect to potential negotiations to further expand the Agreement's market access coverage. The Committee will review the implementing legislation of Iceland and the Netherlands with respect to Aruba, which will complete the review for all the current GPA Parties.

3. Committee on Trade in Civil Aircraft

Status

The Agreement on Trade in Civil Aircraft (Aircraft Agreement), was concluded in 1979 as part of the Tokyo Round of multilateral trade negotiations. Although the Aircraft Agreement was not renegotiated during the Uruguay Round, it remains fully in force and is included in Annex 4 to the WTO Agreement as a plurilateral trade agreement.

The Aircraft Agreement requires Signatories to eliminate duties on civil aircraft, their engines, subassemblies and parts, ground flight simulators and their components, and to provide these benefits on a PNTR basis to all WTO Members. On non-tariff issues, the Aircraft Agreement establishes international obligations concerning government intervention in aircraft and aircraft component development, manufacture and marketing, including:

Government-directed procurement actions and mandatory subcontracts: The Agreement provides that purchasers of civil aircraft (including parts, subassemblies, and engines) will be free to select suppliers on the basis of commercial considerations and governments will not require purchases from a particular source.

Sales-related inducements: The Agreement states that governments are to avoid attaching political or economic inducements (positive or negative linkages to government actions) as an incentive to the sale or lease of civil aircraft.

Certification requirements: The Agreement provides that civil aircraft certification requirements and specifications on operating and maintenance procedures will be governed, as between Signatories, by the provisions of the Agreement on Technical Barriers to Trade.

Under Article II.3 of the Marrakesh Agreement, the Aircraft Agreement is part of the WTO Agreement, however only for those Members who have accepted it and not for all WTO Members. As of December 31, 2001, there were 29 Signatories to the Aircraft Agreement: Bulgaria, Canada, the European Communities, Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Egypt, Estonia, Georgia, Japan, Latvia, Lithuania, Macau, Malta, Norway, Romania, Switzerland and the United States. Although Albania and Croatia have committed to become parties upon accession to the WTO, which occurred in 2001, neither has accepted the Agreement. Chinese Taipei, which became a WTO Member on January 1, 2002, also became a Signatory to the Aircraft Agreement on that date. Oman agreed to become a party within three years of accession. Those WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Chinese Taipei, Colombia, the Czech Republic, Finland, Gabon, Ghana, Hungary, India, Indonesia, Israel, Korea, Mauritius, Nigeria, Oman, Poland, Singapore, the Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia and Turkey. In addition two WTO accession candidates, the Russian Federation and Saudi Arabia, have observer status in the Committee. The IMF and UNCTAD are also observers.

Major Issues in 2001

The Aircraft Committee, permanently established under the Aircraft Agreement, affords the Signatories an opportunity to consult on the operation of the Agreement, to propose amendments to the Agreement and to resolve any disputes. During 2001, the full Committee

formally convened twice and also met once informally in conjunction with a meeting of the Technical Sub-Committee reviewing the Agreement's Annex. The Committee agreed to open a new Protocol (2001) for acceptance by the Signatories that revises the Agreement's Annex of aircraft items to be accorded duty-free treatment to bring them into accord with changes to the international Harmonized Commodity Description and Coding System. The Committee also agreed to recommend interim application of duty-free treatment for ground maintenance simulators, a product not currently within the defined coverage of the Agreement.

In addition, the Committee discussed various aircraft-related trade matters including: conforming the language in the Agreement to the WTO; end-use customs administration including a proposal to define "civil" aircraft by initial certification rather than by registration; and, statistical reporting of trade data. The United States also raised certain activities by other Signatories that might result in trade barriers or market distortions, such as the failure by France to promptly certify large civil aircraft at full seating capacity, European Union support for large civil aircraft development and marketing, Belgian government exchange rate guarantees for aircraft component manufacturers, and European Union regulations restricting the operation of aircraft, otherwise compliant with International Civil Aviation Organization Stage III noise standards.

Prospects for 2002

The United States will continue to seek to conform the Aircraft Agreement with the new WTO framework while maintaining the existing balance of rights and obligations. The United States will also continue to make it a high priority for countries with aircraft industries that are seeking membership in the WTO to become a Signatory to the existing Aircraft Agreement. In addition, other countries that might procure civil aircraft products, but are not currently significant aircraft product manufacturers, are being encouraged to become members of the Agreement in order to foster non-discriminatory and efficient selection processes for aircraft products based solely upon product quality, price, and delivery.